

A P P E A R A N C E S :

MR. LOUIS M. RUNDIO, JR.
McDermott, Will & Emery
111 West Monroe Street
Chicago, IL 60603

On behalf of the Defendant.

Also present: Norman B. Hjersted, and
Sally Swanson

C O N T E N T S

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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Donald Grimmett				
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(Sierks)	6			
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(Rundio)		64		
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(Sierks)			69	
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Sally Swanson				
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(Sierks)	71			
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(Sierks)			229	
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E X H I B I T S

FOR IDENT. IN EVIDENCE

Plaintiff's

25 and 26	12	64
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28, 29, 30, 31		116
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1 (The hearing was resumed and the folloiwng
2 proceedings were had, reported as follows:)

3 THE CLERK: All rise.

4 THE COURT: Mr. McPhee, if you would call your
5 next witness, please.

6 MR. MCPHEE: Your Honor, Mr. Sierks will be
7 inquiring of the first two witness today.

8 THE COURT: Mr. Sierks, call your next
9 witness.

10 MR. SIERKS: Your Honor, we would like to call
11 Donald Grimmett.

12 THE COURT: Approach the witness stand the
13 clerk will administer the oath.

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- 1 DONALD PAUL GRIMMETT,
2 called as a witness by the Plaintiff, being
3 first duly sworn to testify the truth, the whole truth
4 and nothing but the truth, was examined and testified
5 as follows:
6 DIRECT EXAMINATION BY:
7 MR. SIERKS:
8 Q Mr. Grimmiett, would you please state your full name and
9 address for the record?
10 A Donald Paul Grimmiett. 4811 Linden Street, Hammond,
11 Indiana.
12 Q And where do you presently work?
13 A Roman Adhesives Company.
14 Q And what do you do at Roman Adhesives?
15 A Maintenance work.
16 Q How long have you been there?
17 A About three months.
18 Q What was your previous employment?
19 A Conservation Chemical of Illinois.
20 Q And how long were you employed at Conservation Chemical?
21 A Total of 12 years.
22 Q What was the first position you held, and if you had
23 held different positions the last position -- or the
24 other positions while you were at C.C.C.I.?
25 A Started out as a laborer, worked to operator,
maintenance supervisor, then manager.
Q And how long did you serve as the plant manager for

1 Conservation Chemical?

2 A From May of '85 until December of '85.

3 Q And did you hold any jobs prior to coming to C.C.C.I.?

4 A There was a lay-off period, I think it was around '80
5 for about eight months. At that time I worked at Roman
6 Adhesives also.

7 Q And prior to coming to C.C.C.I. in, was it 1973?

8 A I worked at in a truck stop in Knox, Indiana.

9 Q And have you had any education since high school?

10 A No.

11 Q Formal.

12 Any training or experience in chemical management?

13 A Just on the job.

14 Q I'd like to briefly trace with you what the site
15 conditions were and what kind of activities Conservation
16 Chemical is engaged in to your knowledge when you first
17 came to the site in 1973?

18 All right. What did the site look like? What
19 activities was the company engaged in?

20 A In '73 it's basically a waste recycling facility,
21 handled different waste acids, and they were treated,
22 neutralized, pumped into a storage tank. It also
23 manufactured ferric chloride and copper oxide.

24 Q Can you describe what type of wastes were treated or
25 neutralized, did you say?

1 A Oh, various acids. Sulfuric hydrochloric, pickle
2 liquors, chromic acid, nitric acid, that type of thing.
3 I couldn't give you a complete list.

4 Q And can you briefly describe the treatment process or
5 where are those wastes neutralized? How did they come
6 into the site? Where was the treatment area?

7 A They were off loaded from tank trucks into storage
8 tanks. They were then drawn out of there into a
9 neutralizing tank, lime slurry was added to it to bring
10 the P.H. from a one or whatever it was, starting point
11 to seven or eight P.H.

12 It was then pumped out of this treatment tank into
13 a storage tank which was tank 20. Then it was loaded
14 out of there and hauled to wherever.

15 Q Turning to the manufacturing of ferric chloride
16 operation, what raw product did that involve?

17 A Ferrous chloride.

18 Q And how did you get ferrous chloride?

19 A It was brought in from steel mills from the pickling
20 operation.

21 Q Is that also referred to as spent pickle liquor?

22 A Right.

23 Q I'd like to have you describe that operation in a little
24 more detail, and possibly for a clear record, this is a
25 smaller copy of what's already been marked Plaintiff's

1 Exhibit 5. And if you can either use that or the
2 smaller copy, and describe how the waste was put on the
3 site and what various tanks the spent pickle liquor may
4 have gone into in the treatment process.

5 And before you answer that, is the spent pickle
6 liquor operation in the '70s similar to what was done in
7 the 1980s while you were at the site?

8 A No. It's similar but there were differences.

9 Q As you go through your testimony, can you indicate what
10 you did in the '70s differs from what was done in 1980s?

11 A All right.

12 MR. RUNDIO: Your Honor, maybe before he
13 starts, I'd like to object on relevancy grounds as to
14 what was done in the '70s. He said it's different than
15 what was done in the '80s, so I don't understand if
16 there's any relevance to what was done in the '70s.

17 THE COURT: What relevance does the '70s have?

18 MR. SIERKS: The relevance is that if we are
19 going to get into the fact that there were pills or
20 releases or residue material from the '70s which
21 continues to be stored at the site, and therefore has to
22 be addressed by the Resource Conservation Recovery Act.

23 Also Mr. Rundio made an issue of the fact what may
24 have been there in the '70s is not covered by R.C.R.A.,
25 and it's important to try to determine what waste may

1 have been placed there according to the date he's using
2 November 19th of 1980.

3 What we're trying to draw out is what did happen in
4 the '70s, what waste may have been there as opposed to
5 what waste is generated in the '80s.

6 MR. RUNDIO: Your Honor, if he wants to start
7 with November 19, 1980 what was on site, that's fine,
8 but I don't see why the 1970s operation has anything to
9 do with what was stored on site or operated on site as
10 of November, 1980.

11 THE COURT: Show the objection as being
12 overruled. I'll determine what relevance it has after I
13 hear all the evidence.

14 Do you recall the question?

15 A You want to know what the differences were.

16 MR. SIERKS:

17 Q I'd like you to describe the overall treatment operation
18 as it involved spent pickle liquor in the '80s but in
19 your framework in the '70s, please point out where
20 changes may have been made between the '70s and the '80s
21 in your description?

22 A Basically what we did was we'd receive the spent pickle
23 liquor from the mills. It would either go into a
24 storage vessel or directly into the reactor, which is
25 where we processed it.

1 Q Are those tanks or vessels indicated on that Exhibit 5?

2 A From the early '70s there was only two of them.

3 Q Let me give you a pen. If you can, locate the areas in
4 which --

5 A This was the basic process area at that time. There
6 were also three vessels here that aren't shown.

7 Q For the record would you describe where you drew your
8 blue line?

9 A It is around the sphere 3-A and an area between the
10 sphere and the tower in that generalized area.

11 Q That was the treatment area in the 1970s?

12 A Right.

13 Q Would you note where the treatment area in the 1980s
14 was?

15 A Right.

16 THE COURT: Why don't we keep our record
17 accurate. Has that been marked?

18 MR. SIERKS: No, Your Honor. It would
19 probably be easier to mark that as a separate Exhibit.

20 THE COURT: Why don't we have that marked?

21 MR. SIERKS: Do you know what Exhibit we are
22 on now?

23 THE COURT: 25, I believe.

24 THE CLERK: 25.

25 MR. SIERKS: Will you mark this also as 26.

1 (Whereupon, documents produced were
2 marked Plaintiff Exhibits 25 and 26
for identification.)

3 MR. SIERKS:

4 Q I'd like to have you draw on -- Exhibit 25 already notes
5 where the treatment area was in the '70s, and I think
6 for clarity we will have you mark on Exhibit 26 where
7 the treatment area for spent pickle liquor was in the
8 1980s.

9 A Do you want to include storage vessels for the raw
10 material?

11 Q Yes.

12 A (Witness complying).

13 MR. RUNDIO: Can I see these before you ask
14 any more questions.

15 MR. SIERKS: Sure.

16 Q Now, viewing the area you indicated on Exhibit 26, can
17 you describe where when the spent pickle liquor was
18 brought to the site, it was placed, what tanks were
19 used? This in the 1980s now.

20 A You want to know each tank?

21 Q Yes.

22 A It was an area from the office or shop building entire
23 work area there to the back roadway. It included tanks
24 F-3, 12, R-1, R-30, R-3, tubs 3 and 5, F-2, which was a
25 finished product tank, F-1 and CB-3 were reactor

1 vessels.

2 Q When the spent pickle liquor first came to the site, how
3 did it come to the site, in truck loads?

4 A Right, tankers. It was unloaded with air pressure into
5 various storage tanks.

6 Q Were there ever any leaks or spills of that material
7 during transfer to the storage tanks?

8 A There were times when we'd have a minor leak from a
9 hose. Usually that was remedied immediately. You'd
10 have a drip.

11 There were occasions when a tank was -- the level
12 in it was enough to where the trailer -- the tanker went
13 empty, and the air pressure blew through the lines, and
14 it would blow material over the top of the vessel, but
15 this was in turn contained into the process sump area.

16 Q So, where the spilled material would drain where?

17 A Into what we call the process sump.

18 Q Where's that located on Exhibit 26?

19 A It's next to the pump where it says "sump." It's within
20 the process area itself.

21 Q And do you know how frequently the tanks would bubble
22 over as you indicate in the '80s?

23 A Oh, it wasn't a real -- didn't occur real often, no.

24 Q Can you estimate the frequency at all?

25 A Oh, I would estimate maybe once a couple weeks or so.

1 Q And how much or what kind of quantities might spill at
2 that time, do you have any idea?

3 A Maybe 15, 20 gallons, somewhere in that range.

4 Q Would you trace then from the storage tanks, how was the
5 spent pickle liquor treated in the system?

6 A All right. It would be pumped from one of the raw
7 material storage tanks into a reactor vessel which was
8 F-1 or CB-3.

9 We would fill that vessel until it would overflow
10 through the piping into tubs five or three which were
11 used to dissolve scrap iron. This was in a contained
12 loop. So what we would do is pull out of tub 5, pump
13 back into F-1, and continue overflowing back over the
14 scrap iron and dissolve it.

15 Q How long did that treatment process take?

16 A It could vary depending on the strength of the pickle
17 liquor, anywhere from 24 to -- we've had batches take 72
18 hours, somewhere in that range. An average of say 30,
19 30 hours.

20 Q Were the reactor tanks you indicated F-1 or CB-3 ever
21 replaced, or are those the original tanks from the '70s?

22 A Not from the '70s. These are '80s.

23 Q '80s.

24 Do you recall, are they ever cleaned out or
25 otherwise --

1 A They've been cleaned. CB-3 had been repaired on two or
2 three occasions.

3 Q In the 1980s?

4 A Right.

5 Q And do you know how they were cleaned out or rinsed?

6 A Just water rinse.

7 Q And where would the material from that rinsing go?

8 A Into the process sump area.

9 Q And turning now to the pumping procedure, forgetting the
10 spent pickle liquor through the system, were there ever
11 leaks in the pumps themselves?

12 A Through the packing gland we -- you have water on the
13 packing of a pump that has the purpose of cooling and
14 lubricating the packing.

15 The packing keeps the acid or products from flowing
16 down the shaft and out into the environment. If the
17 packing goes bad, it will leak back through the outlet
18 of the gland water. Those are the only leaks we've had
19 on the pump or if a housing casing on a pump develops a
20 leak, but those are -- they don't happen real often and
21 they are very minor amounts of liquid.

22 Q Do you recall how frequently did you have to maintain
23 they pumps?

24 A It varied from pump to pump. And there's -- there's no
25 set amount of time on frequency really. Basically it's

1 a preventive maintenance type thing. It's checked. The
2 operators on duty were supposed to monitor the P.H. of
3 the liquid coming out of the gland. If it turned to the
4 acid side, then they contacted the maintenance
5 department, and we repacked the pump or found out what
6 the problem was.

7 Q And how is the gland water circulated through the pump
8 to keep the sump cool?

9 A Okay. It's basically line pressure from city water,
10 which is, I think it was around 60 pounds in Gary. The
11 water is fastened on one side of the stuffing box which
12 is where the packing goes. It goes into the stuffing
13 box. It lubricates and cools the packing and then
14 there's an outlet side on the other side of the stuffing
15 box.

16 This should be only water coming out when the
17 packing wears or you have another problem, something is
18 wrong with the pump, you will get the -- the P.H. will
19 turn to the acid side.

20 Q Why is that?

21 A Just from wear or mechanical failure of some sort.

22 Q Is there any possibility of the spent pickle liquor or
23 the treatment product which is being pumped leaking
24 through?

25 A Right. It will seep through into the gland water that

1 is exiting the stuffing box.

2 Q Is that what would lower the P.H.?

3 A Right.

4 Q And that is what you were concerned about with P.H.
5 testing?

6 A (Witness nods head).

7 Q How frequently would you test for P.H. in that gland
8 water?

9 A It was supposed to been tested ever shift by every
10 operator.

11 Q How frequently during the shift?

12 A Originally it was once a shift. Then we changed to, I
13 think it was, every two hours or so. I'm not really
14 sure about that, but we did step up the procedure. They --
15 we also began running a free acid test on them every
16 shift, but we had a problem with getting a reading on
17 the free acid because it was supposedly the free acid
18 percent was low, and the test that we ran, we couldn't
19 obtain a reading from it.

20 Q Why was that, do you know?

21 A I don't know.

22 Q Is that pump or the cooling gland water process a closed
23 system or did the water you use --

24 A The water exiting the stuffing box went -- drained
25 directly into the process zone.

1 Q And do you recall what quantities of water would enter
2 the process sump from the pumping process?

3 A That varied from pump to pump also. If we had a pump
4 that had a worn shaft or bad packing in it, it would
5 leak more liquid, or you'd have to increase the cooling
6 water or the gland water going to it.

7 Q Did you recall generally in your P.H. testing what the
8 range of P.H. was in the gland water?

9 A It would run from whatever water -- P.H. of water is to --
10 we've -- I've seen it at a one P.H. which is highly
11 acid.

12 Q Do you recall how frequently you might have seen P.H.
13 readings like below or at two or below?

14 A There may have been occasions when a pump was -- had
15 been run at a low P.H. for two or three days at a time
16 until there was time to schedule down time on it and
17 take care of the problem.

18 Q How many pumps are used in the treatment process?

19 A There were two pumps used in process. Two pumps were
20 used for transferring finished product and/or raw
21 material.

22 Q And the two pumps used in the process are used
23 continuously or --

24 A Whenever a batch was running, they ran just about 24
25 hours a day.

1 Q So you would have to monitor both pumps?

2 A Right.

3 Q Do you know how frequently you would have to repack the
4 pumping or the pumps?

5 A That varied on -- well, the two process pumps, the runs
6 ones that ran 24 hours a day or close to it, they needed --
7 naturally they needed repacking sooner than the others.

8 A lot of bearing on packing if a pump is run dry
9 for any length of time, which means there is no liquid
10 in the pump, it will cause it to heat up, and that will
11 deteriorate the packing faster than normal. This has
12 happened -- or did happen on quite a few occasions.

13 Q And did you personally repack pumps?

14 A Right.

15 Q Do you recall how many -- or what frequency, if you can
16 indicate?

17 A Well, that varied a lot also. You can't set a time on
18 it, but I did bring it to the manager's attention that
19 people were running -- I'd be working maintenance and
20 walk through and hear a pump running dry, and I'd have
21 to shut it off myself.

22 Now, if someone was working a later shift, you
23 know, it may run for an hour if they are doing something
24 else. I don't know how often this happened, but on more
25 than one occasion I witnessed it myself, and that's --

1 it wears it badly.

2 Q When you say running dry, does that mean the treatment
3 product was not going through the pump?

4 A This would be a transfer or if they were in process in
5 the reaction tub where we dissolve the scrap iron, there
6 were times when the temperature would rise very rapidly,
7 and you would lose suction on a pump just because the
8 temperature the pump would run dry.

9 There's no danger of a tank running over, but
10 you're damaging the pump itself in doing this.

11 Now, that happened maybe once every couple batches.

12 Q And whatever leaks or spills from the pumping water
13 again went into what area?

14 A The process sump.

15 Q Indicated on area 26 is a box labeled sump?

16 A Right.

17 Q And you indicated iron is used in the process and in
18 making ferric chloride?

19 A Scrap iron.

20 Q Would you indicate which tubs were used for the iron
21 part of the treatment?

22 A There are tubs 5 and 3. They are within this area I
23 penciled in on 26.

24 Q And were there any spills or overflows from those tubs
25 5, 3?

1 A On occasion.

2 Q And how would that happen?

3 A There were a couple causes. One, the level could have
4 been, just simply the level was too high in the tub.

5 Usually when it happened, it's like I described.
6 We'd get a rapid temperature rise. Okay. The --
7 towards the end of a process of a batch, the temperature
8 would rise to, say, 160, 170 degrees. If they had to
9 add scrap iron at that time, and they didn't add it slow
10 enough or the right amount, these tubs would boil over.

11 And when they did that, they like everything else,
12 they were drained into the process sump.

13 Q Can you give a frequently as to how often that might
14 happen?

15 A It might have happened two or three batches in a row;
16 you might run a month without it happening. It really
17 depended on the operator or the situation.

18 Q Turning back to the pumping process, were the pressures
19 of the pump gland water and the treatment spent pickle
20 liquor going through the process equal or was one under
21 more pressure than the other?

22 A Like I said the city water pressure I think was around
23 60 p.s.i.

24 Q Do you know what the pressure was in the treatment?

25 A Discharge pressure on our pumps varied from 10 to 12

1 p.s.i., just circulating the loop, the system.

2 When we added chlorine to it, which is part of the
3 process also, the pressure would rise to say, 20 to 30
4 pounds.

5 Q Where was chlorine added in the system?

6 A It was added at an injection point near F-1 and CB-3,
7 the two reactor vessels.

8 Q Was that -- when was it inserted in the treatment
9 process?

10 A At various stages during -- usually it start -- the
11 process we had in the '80s, it was more or less a
12 constant feed of chlorine from start to finish.

13 Q Were there ever any leaks or spills in the adding of the
14 chlorine in that area?

15 A We did on occasion have leaks through valves.

16 Q Would that be chlorine being leaked out or would that be
17 the treatment -- treated product leaking?

18 A Chlorine leaking out.

19 Q Where would that go if that leaked?

20 A Usually it vaporized, but what liquid if any did come
21 out hit the ground and went into the process sump.

22 Q Can you recall how frequently you might have had spills
23 of chlorine?

24 A Not real often. Very, very seldom, really.

25 Q Now, turning to -- back to the treatment process again,

1 how did you determine when you had reached the finished
2 product for chloride?

3 A We -- you -- it's based on -- you titrate it out. You
4 have to get the ferrous chloride and the spent pickle
5 liquor down to an end point of less than two percent.
6 All right. And that's why you added the chlorine.

7 I'm not a chemist. I can't give you a chemical
8 breakdown of how it actually occurs, but that's what we
9 did.

10 Q Was there any test you performed to determine that it
11 was at the right level?

12 A Right. We titrated; we drew a sample every two hours of
13 the batch in process. This was from start to finish.
14 It was titrated with potasium dichromate to give you a
15 reading on the ferrous content.

16 Q And when you finished the treatment where -- can you
17 indicate on Exhibit 26 where that product was stored?

18 A Tanks F-2, for a time tank 3-A, but that was put out of
19 service.

20 Q Do you recall when?

21 A I would -- I couldn't really give you an accurate date,
22 but I would say it was about around '82, '83, something
23 like that.

24 Tank 40 and 41 also.

25 Q Okay. And you indicate that -- how did the treated or

1 finished product get into the storage tanks, was it
2 pumped?

3 A It was transferred, right. From the reactor, say, F-1
4 or CB-3 we used the same pump that we used to process it
5 with. The system was piped in, so it was simply open
6 these valves and close this one, and it pumped to
7 storage. There were quite a few occasions where we
8 processed it. We were selling it as fast as we
9 processed it, so it never was transferred. It went
10 directly out of a reactor into tankers or rail cars.

11 Q And then did -- it went off-site from there?

12 A Right.

13 Q Let me ask you then with the pumping process
14 transferring either -- well, first, to storage tanks,
15 were there ever any spills or releases during that
16 transfer process?

17 A Well, a few occasions there were.

18 Q And how would those occur, do you remember?

19 A From tanks, vessel carry-overs as we called them. The
20 tanks were just simply over-filled.

21 Q And would material spill over then?

22 A Right. And it would drain into the process sump.

23 Q Okay. Do you recall the frequency of those spills?

24 A Not real often. Wasn't a -- didn't occur real often,
25 no.

1 Q Would once or twice a month be too often --

2 A Oh, yes.

3 Q -- to get a frequently?

4 A That's too often. More like once every three months if
5 that.

6 Q And also then in the transfer of the product to the
7 tanks or whatever that were used to take it off-site,
8 were there spills in the unloading of that process?

9 A On one occasion loading a rail car there was. That was
10 because the hose for the loading spout that went into
11 the rail car blew off the end of the pipe. It wasn't a
12 large amount, say, 30, 40 gallons.

13 Q Do you recall where would that material have gone if you
14 remember?

15 A On the ground. It was -- what we did when this happened
16 would be we take a bag of lime and pour it on the
17 spilled area to neutralize it.

18 Q Can you indicate on Exhibit 26 where that spill area
19 would have been?

20 A That would be -- it's on the rail spur right at the --
21 around the curve of the roadway.

22 Q And is it -- can you describe it as a proximity to
23 anything that's labeled on that Exhibit?

24 A Between say tank 19 and 20, in that area.

25 Q Are there any other spills or releases that you can

1 remember during the loading of the product to be
2 transferred off-site?

3 A No.

4 Q And can you just describe generally whether the
5 treatment process you just described for the '80s is
6 significantly different from what occurred in the '70s?

7 A It's basically the same process in the '70s. The only
8 difference was it was not a continuous loop.

9 Q And what do you mean by continuous loop?

10 A In the '80s, like I said, we would fill a reactor vessel
11 to the point where it would overflow through piping into
12 the scrap dissolving tubs. Once they were to the level
13 where you wanted it, we would pull out of the tub back
14 into the vessel, and what you're doing in essence was
15 treating two tanks at once.

16 In the '70s it was a matter of processing the
17 reactor tank which was the sphere, you would add
18 chlorine to a certain end point, gravity feed it into
19 three open top vessels which had scrap iron. There was
20 no circulation involved in these dissolving tanks. You
21 would let it sit to a point until it dissolved scrap,
22 and next shift or whatever would pull it back into the
23 same tank. You would run through the same process until
24 you arrived at the end point you wanted.

25 Q And why was the -- why did you shift to the different

1 process in the 1980s, a continuous loop?

2 A I don't really know. It's a better process. It speeds
3 things up.

4 Q And would you indicate it -- you've mentioned a process
5 sump in the sump area. Are those identical areas?

6 A Yeah. Process sump. There is a -- within this process
7 sump there's a smaller -- it's a fiberglass vessel
8 that's encased in concrete. What we would do, we would
9 drain our lines from transferring either pickle liquor
10 or finished product for chloride into this tank versus
11 draining it into the process zone. When it got to a
12 level, say, six inch from the top, we would pump it back
13 into process and re-process the material.

14 Q So the fiberglass tank was used to catch the --

15 A It was drained from pipes is what it was. We didn't
16 like to leave liquid in pipes especially during the
17 winter months.

18 Q And when you pumped the finished product into the tanks
19 or trucks to take it off-site, did you use a filter or
20 anything like that?

21 A Right.

22 Q And did you clean or rinse the lines that were used to
23 pump?

24 A We cleaned the filter -- there were times we'd clean it
25 once a week, sometimes we'd clean it twice, two or three

1 times a day. The material that came out of this filter
2 went into the process sump.

3 Q And again the process sump is the larger area?

4 A Correct.

5 Q When did you start using that process sump area, if you
6 can recall?

7 A For the process ferric chloride, that sump has been
8 there -- was there when I started in '73.

9 Okay. It's always caught rain water or whatever
10 drained in there. Everything in the -- this end of the
11 plant drained into that, that area.

12 Q What do you mean by "this end of the plant"?

13 A Well, the process area of the plant.

14 Q Which is the large area you've indicated in blue?

15 A Right.

16 Q And how frequently would you pump out or recycle the
17 product that entered the smaller fiberglass area tank in
18 the sump area?

19 A That varied on the -- how often we were loading trucks
20 or whatever, but it was drained -- the lines were
21 drained usually two or three times a day. We would
22 probably pump that smaller area every other day.

23 Q And again where did that material go?

24 A It went directly back in the process or into a storage
25 tank to be reprocessed.

1 Q And do you recall how frequently you might have cleaned
2 out any of the tanks used either in the treatment -- you
3 already covered the treatment tanks, I believe, any of
4 the storage tanks?

5 A The storage tanks for raw material or finished product
6 were usually only cleaned if they needed repairs, which
7 wasn't very often at all.

8 The two scrap dissolving tubs, 3 and 5, were
9 supposed to have been cleaned on a weekly basis. They
10 weren't.

11 Q How frequently were they cleaned?

12 A At the most, every couple weeks.

13 Q And what was done -- or how were they cleaned?

14 A There was a residue -- I was told it was carbon and oil,
15 that came off of the scrap iron, the turns that we
16 dissolved. That was shoveled out into a front-end
17 loader bucket. There was dirt, rock that they picked up
18 as they scooped the iron to dump it in there.

19 They'd shovel it out of the tank into this
20 front-end loader bucket, add bag of lime or towards the
21 end we were adding sodium hydroxide, caustic solution to
22 it.

23 It either went into the process sump, or later on
24 we built a small containment area near the process sump.

25 Q Can you indicate that on Exhibit 26?

1 A It's where R-3 and R-30 are shown on this, but those
2 tanks right now are not there. They haven't been there
3 for awhile.

4 Q When you -- you recall when you placed that --

5 A Containment area?

6 Q -- material in there?

7 Yes.

8 A That would be -- we built the containment area around
9 say, September or October of '85. Before that it went
10 into the process sump after it was treated with lime
11 slurry or sodium hydroxide.

12 Q Okay. And in September or October was that material
13 placed on the ground?

14 A It was placed in this containment area. What we did, we
15 built a small diked area, laid plastic on the ground,
16 and poured some rock over it to hold the plastic in
17 place. We built this containment area to pull the solid
18 material out of the process sump which had built up in
19 the bottom of it. We were supposed to dig it out, get
20 it up to where we could get a sample, find out what it
21 was and then find out what we could do with it.

22 Q And how much material from whatever the tanks or those
23 areas, 3 and 5 were placed in that disposal area?

24 A I think the bucket on this loader was about a cubic
25 yard, and may have been a third of that on each clean

1 out.

2 Q Do you know how many clean outs or material loads were
3 placed in there?

4 A In that area itself, maybe three or four.

5 Q Okay. I'd like to now turn to the process sump area and
6 what you did, or what C.C.C.I. did, when I say you, with
7 the material that went into the process sump.

8 Generally, how was the material that went into the
9 process sump handled in the 1980s?

10 A It was -- we would circulate the process sump itself.
11 We had a permanent pump set in there. We would
12 circulate the liquid from one end of it to the other.
13 We would add bag lime in slurry form which means we
14 would add water to it; we would add say two bags of lime
15 to 35, 40 gallons of water.

16 Then we would dump this into the sump, agitate it
17 with air, and we would continue this process until the
18 P.H. reached 7, or we were told not to go over 8 P.H.

19 Q And how did you determine how much lime to add in the
20 process sump area?

21 A By checking the liquid coming out of the circulation
22 with P.H. papers.

23 Q And can you briefly describe how that was done, how
24 frequently you tested for P.H.?

25 A About every two batches of slurry they'd make, they

1 would let it circulate, say, ten or fifteen minutes, and
2 then check the P.H. If it was still too low, they would
3 make up one or two more batches of slurry, and then
4 circulate another ten or fifteen minutes, and check it.

5 This process sump was -- there were times you
6 neutralized it twice a week, sometimes you'd go two or
7 three weeks without having to bother with it.

8 Q Is that because --

9 A Just because of the volume in the sump itself.

10 Q When did you begin to neutralize it, how full would it
11 have to get?

12 A We tried to start neutralizing it when we were about --
13 there's about a foot outage from this smaller vessel
14 that's located inside the sump, which is actually lower --
15 it's about a foot and a half lower than the sump -- the
16 top edge of the sump itself.

17 Q Do you know how deep the sump itself is?

18 A I would say -- I think it's about six or eight feet
19 deep.

20 Q And that smaller fiberglass tank is how deep set into
21 the --

22 A Four. I think it's four feet.

23 Q So how much room would you have between the bottom of
24 the sump area and the top -- lower -- sorry, bottom of
25 the sump and the bottom of that tank and the sump?

1 A The bottom of the sump and the top of the tank or --

2 Q Yeah. You indicated the smaller fiberglass tank is
3 actually in the sump area.

4 A Right.

5 Q How much room is there between the bottom of that tank
6 and the bottom of the sump?

7 A I think the bottom of it is setting right on the bottom
8 of the larger sump.

9 Q So how would you -- you indicated you tried to start
10 treating when it reached a certain level with respect to
11 that other tank?

12 A Right. The sides of the smaller vessel when we tried to
13 get it where we were about a foot from the top of that,
14 when the level reached that point that's when we started
15 the process. Sometimes it would take us a day to treat
16 it. In other words, in a big rush when you were at that
17 point, but if it did -- was high, you treated it
18 immediately and then pumped it out.

19 Q And why was that level chosen?

20 A Just to keep it from leaking in the smaller container
21 which it had high acid material in it.

22 Q And how did you determine -- where did you take the P.H.
23 samples, from the top of the tank, or how did you sample
24 for P.H.?

25 A The process sump that we were treating?

1 Q Yes.

2 A We had a pump in, we'll call it the west end of the
3 process sump; we would hook a hose on and run it over to
4 the east end. It would pump from this point back to
5 this point to make a circulation with it. At the end
6 point of that hose is where we checked the P.H.

7 Q Where was the hose taking water?

8 A This is a sump pump. It sets directly into the sump
9 itself. There is no water to it. It sets down in the
10 liquid.

11 Q At the west end, where is the process water drawn from,
12 from the pump, from the bottom of the tank?

13 A From the bottom of it. From the bottom -- well, it
14 wasn't directly at the bottom of the sump itself. It
15 was, I'd say, a couple feet below liquid level.

16 Q And then at the east end where did it discharge into the
17 upper portion or the lower?

18 A The upper portion.

19 Q And how frequently again did you say you tested for
20 P.H.?

21 A We'd make a couple batches of slurry up. I'd say it'd
22 take 20, 20 minutes or so to make the slurry and dump it
23 into the sump. Then you'd let it mix for ten or fifteen
24 minutes, check it. The P.H. was too low, repeat the
25 process until you reached seven or eight P.H.

1 Q And how did you -- it was with P.H. paper?

2 A P.H. paper.

3 Q Do you recall what type of papers you used?

4 A No. Not really.

5 Q Was that P.H. testing the same as what you did in the
6 1970s? Did that vary at all?

7 A Same.

8 Q And once you reached what you believed was the proper
9 P.H. level, what was done with the material in the sump?

10 A At one time it was pumped from the process sump area
11 into basin 19 as it was called which was a type of
12 containment area around tank 19.

13 Q What years do you recall was that done?

14 A It was early '80s, whenever we started processing ferric
15 chloride again. Early or mid '80s. Early '80s.

16 Q How frequently do you indicate you actually pumped
17 liquid or the material from the sump area into pond 19?

18 A It varied a lot on the weather. If we had a lot of
19 rain, you'd treat it and pump out more often. There
20 were times when we've -- we had treated it and
21 transferred it to that basin twice in one day just
22 simply because the rain water, because there wasn't a
23 lot of treating to it. You would maybe mix one
24 container of slurry to get the P.H. to where you want
25 it.

1 Q And in drier times can you estimate how frequently you
2 might have pumped out the sump area?

3 A Anywhere from -- it can run from two or three weeks to --
4 if we were shipping a lot of material and had to wash
5 the filter a lot more often, you'd generate more
6 material which was more acidic. It could go to once,
7 maybe once every two weeks. Once every week.

8 Q Do you recall whether Conservation Chemical ever sampled
9 the material in the sump?

10 A The liquid, yes.

11 Q Yeah, liquid or --

12 A On a couple of occasions they sampled and sent it out
13 for testing.

14 Q And did you see the results that came back?

15 A Only thing I saw the last time which was from, I think
16 it was from Chem-Clare, I only saw the price on it,
17 which they quoted to dispose of it.

18 Q Do you recall, was there any material left in the sump
19 area after the liquids were pumped out?

20 A Oh, quite a bit.

21 Q And what was -- can you describe what that material
22 looked like?

23 A Some of it was lime slurry that hadn't gone into
24 solution completely. It just dropped out and settled in
25 the bottom.

1 I was told some of it was iron chloride or iron
2 oxide that had dropped. There was a lot of dirt, rock.
3 Like I said, everything washed into that area. It took
4 dirt and rock and everything else with it.

5 Q Did you ever recall taking samples of that material --
6 solid material?

7 A The solids? No, that's why we built that containment
8 area to dig it out, try and get a representative sample
9 of it, and then they were supposed to figure out what to
10 do with it.

11 Q Do you recall how frequently that material was cleaned
12 out of the sump in the 1980s?

13 A Not often enough, apparently. I think it was cleaned
14 one -- one time; that may not have been in the '80s. I
15 think it was back in the '70s, because we weren't --
16 there was a lull period there when we weren't
17 manufacturing any products.

18 Q And what years was that, if you know?

19 A I think it was late '70s, early '80s.

20 Q And the '70s, do you recall how frequently that sump
21 area may have been cleaned out other than that one time?

22 A I couldn't really say. I think it was cleaned once, but
23 we weren't processing it that time, I know, so it was
24 back in the '70s.

25 Q Can you describe what colors or what the appearance of

1 that material was?

2 A It's like a brownish mud is what it looked like. You
3 would hit pockets of a white muddy material which looked
4 to me like lime slurry. There were times when we would
5 drop the liquid level and we would try -- excuse me --
6 with an "aerous" barge, just try to agitate it, get it
7 up into solution somewhat, and you would hit areas where
8 the lime slurry had dropped out.

9 Q Did any material look red, or were there any other
10 colors other than --

11 A Not really. It's -- well the whole thing was like a
12 reddish-brown color.

13 Q And then you indicated again that the liquids were
14 pumped into tank 19 during most of the 1980s --

15 A Not --

16 MR. RUNDIO: Objection, Your Honor.

17 MR. MCPHEE:

18 Q I mean -- I'm sorry, into the area around tank 19?

19 A During which period?

20 Q That's what I was trying to indicate, ask you to repeat
21 again.

22 A It was pumped in there in the '80s. But after, I'd say,
23 early '80s when we started reprocessing or started
24 processing again.

25 Q Were there any other areas that you used to pump that

1 liquid in?

2 A We did go into tank 20 at one time. This was towards --
3 just before we shut down.

4 Q Why did you switch your operations?

5 A Well, because the E.P.A. was cleaning basin 19, and we
6 didn't want to pump the treated material there, had
7 nowhere else to go with it. What I had started was
8 pumping this process sump material before treatment into
9 various storage tanks.

10 Q And where would they be located?

11 A Within the process area, there are tanks R-3, R-30, R-1.
12 Not shown on this, or around this sphere area, there
13 were four. I think they are 35,000 gallon tanks that we
14 set up.

15 Q When did you do that?

16 A We did that in the summer of '85. We hadn't used them
17 for anything, so we began pumping this untreated process
18 sump material into there.

19 Q And when did you start doing that?

20 A That was, I'd say, fall of '85 --

21 Q How --

22 A -- October, November.

23 Q I'm sorry. How long did you pump into tank 20?

24 A We processed the sump twice and pumped it into tank 20
25 which was -- I couldn't really say how many gallons that

1 held, you know, one pumping.

2 Q Did you stop using tank 20 for that -- for holding that --
3 treating -- not treating -- for storing the processed
4 water?

5 A Right after we pumped that on the two occasions, we went
6 up to using these large tanks. They were numbers 44 and
7 45 if I'm not mistaken.

8 Q Was there any event that occurred in tank 20 to cause
9 you to stop using it?

10 A It began leaking.

11 Q And do you recall the approximate time that happened?

12 A It was right after the second time we pumped.

13 Q That would have been -- do you recall what month?

14 A That was like -- well, it was late October or early
15 November, because immediately after that we started
16 using the larger tanks near the sphere area.

17 Q Can you describe the leak, how large it was, what
18 quantities?

19 A From the tank I would call it a -- it's more like a drip
20 to me. There were three bad areas on the tank. From
21 what, I don't know, but --

22 Q Can you estimate the quantity that might have leaked out
23 of the tank?

24 A I couldn't really say. I don't think it was a large
25 amount.

1 Q Can you describe where that leaked material went on
2 Exhibit 26?

3 A Okay. Right by tank 20, part of that -- the curvature
4 of the roadway is no longer there. What we had done, we
5 dug out this area around 20 to increase the holding
6 capacity in case this tank did rupture. All right. And
7 we diked up around there, so this material went into
8 this area, the -- around tank 20.

9 Q And when did you install or construct the diked area --
10 increase the diked area?

11 A That was October of '85.

12 Q I'd like to briefly ask you some questions about other
13 areas of the site that are indicated on Exhibit 26, and
14 this is a general timeframe now.

15 Do you know whether C.C.C.I. ever disposed of waste
16 products in the pie-shaped basin indicated on Exhibit
17 26?

18 A The only material I ever knew going in there was
19 material that had leaked out of tank 20. It had drained
20 into -- which is shown as the pit on this number 26.

21 Q And is it --

22 A We had pumped --

23 Q -- excuse me. Is that the A.P.I. separator?

24 A Yes, A.P.I. separator box. We pumped that out into the
25 pie basin.

1 Q Do you recall when that occurred?

2 A That was early '70s.

3 Q Do you recall how much material was pumped into the pie
4 basin?

5 A I couldn't begin to tell you what the capacity of that
6 is.

7 Q And about the area near tank 22, was any material ever
8 added near there to your knowledge?

9 A Not to my knowledge.

10 Q Was there material added in the pond area around tank 19
11 other than the process material from the sump area?

12 A The material that leaked out of the tank, the oil. It
13 was backfilled. A lot of this -- originally that area
14 was larger.

15 Q What do you mean by that?

16 A There was a containment area there that was built, I
17 guess, by the refinery that owned the property, the
18 facility before we did. The containment area just
19 extended further away from the tank, so they had
20 backfilled in to create more room to set various old
21 tanks and that type thing.

22 Q And I think it's Exhibit 1 behind this. There's an
23 off-site basin area shown on Exhibit 1. Can you recall
24 if C.C.C.I. added material in that area while you were
25 there?

1 A No liquids.

2 Q Any solids?

3 A Just everyday refuse, garbage.

4 Q And when would that have occurred?

5 A That was -- not really sure. Late '70s, early '80s,
6 maybe.

7 Q And would you describe when you mean garbage, what did
8 that consist of?

9 A Paper from the office. Just normal everyday garbage.

10 Q You now are -- can you describe what types of materials
11 were added to tank 20 both in the '70s and in the '80s?

12 A In the '80s, like I said, on the two occasions, we
13 treated the process sump. Pumped it into there on those
14 two occasions.

15 '70s, it was material waste acids that were brought
16 in, treated with a lime slurry, and then pumped to tank
17 20.

18 Q Okay. Referring to tank 19, do you recall any major
19 spills from tank 19, significant spills in your opinion?

20 A We had one in the '70s, early '70s, which was basically
21 the same thing that happened here in '85.

22 Q Would you describe the 1985 spill?

23 A Apparently corrosion ate a hole through the tank, and
24 what material was left in there, this oil, whatever it
25 is, leaked out onto this pond area.

1 Q And can you describe how much of the pond area was
2 filled up?

3 A Just about all of it was covered. I would say at least
4 three quarters.

5 Q And how did you address that spill?

6 A We contacted the E.P.A. It just so happened that they
7 were coming in the next day anyway, so --

8 Q Did the company assist in any way or take clean-up
9 measures?

10 A We began to. What we did, the material in this basin
11 was a lower P.H. It was around a 3 or 4 P.H.

12 What we did, we purchased a truck load of sodium
13 hypochlorite -- or hydroxide, excuse me, caustic
14 solution.

15 We set up a circulation loop in this pond which was
16 using two or three portable pumps to just move the
17 liquid, and we added the caustic solution to bring the
18 P.H. back up.

19 Q When was that?

20 A That was probably -- I think it was two or three days
21 after the spill occurred. Like I said, the E.P.A. came
22 in the next day and started cleaning up the oil
23 themselves.

24 Q In determining what the P.H. was then at that time, how
25 did you do that?

1 A Same way. We checked the process sump with the P.H.
2 papers.

3 Q Do you recall where in the basin you would have --

4 A Various points. We checked it at -- we had three pumps
5 set up at basically -- one on -- it's more or less a
6 triangle shaped area at all three points of the
7 triangle.

8 Q Do you recall how much sodium hydroxide you added to the
9 pond?

10 A I think about 5,000 gallons.

11 Q And how was that mixed in?

12 A We had a -- they call it an induction tee.

13 Q Can you describe that?

14 A What you do, you pump liquid through this. It creates a
15 vacuum and it pulls -- what we do, we pulled the
16 hydroxide in it, mixed as the liquid is pumping through.
17 So a mixing tee is what it is, and we just circulated
18 the whole area.

19 We did get it up to about a six P.H., and then
20 on-site coordinator started pumping that material into
21 one of the other tanks just to drop the level in the
22 pond.

23 Q Turning to the A.P.I. separator box, you indicated there
24 was one time that there was a spill from tank 20 into
25 that area?

1 A Right.

2 Q Was that separator box generally dry or empty?

3 A When I started there, it was -- I would say half full.
4 There was some sludge material in it, and water which
5 was usually rain water that settled in.

6 Q Do you know what that sludge material was?

7 A When I started there, no. I know when tank 20 ran over,
8 it went into there, and that was neutralized acid,
9 treated.

10 Q And did you ever or did C.C.C.I. ever empty out the
11 sludge that was there when you started?

12 A In the A.P.I. --

13 Q In the A.P.I. separator box?

14 A We did -- like I said we started pumping that into the
15 pie basin at one time. That was back in '73 or '74.

16 Q Was it ever cleaned out after that again?

17 A No.

18 Q And do you recall if it has any material in it at this
19 time?

20 A As far as I know, it did when I left.

21 Q Do you know whether that would be liquids or sludge
22 materials also?

23 A Probably both.

24 Q Turning to the cyanide tank area, are you familiar with
25 which tanks store cyanide or contain cyanide?

1 A Yes. Tanks 8-A, 6-A, 28-X, 23, 4-A, 2-A, there's a R-2,
2 S-T-1. This says R-B-1 which is supposed to be D-B-1,
3 and a 38 which is an old transport tanker which was put
4 out of service.

5 Also the sphere and the tower had -- I'm not sure
6 whether that's completely empty; but, as far as I know,
7 we pumped out everything we could get out of it.

8 Q Could you describe the condition of the cyanide tanks?

9 A Anywhere from fair to poor.

10 Q Did you have any concerns or were the employees ever
11 instructed as to how to handle those tanks?

12 A Every operator on duty was supposed to make a perimeter
13 check and a check of the tank area. Any tanks that
14 contain any liquid, they were supposed to check.

15 Q How often?

16 A On a two hour -- every two hours per shift. If there
17 were any -- there were some, what we call, moist spots
18 on these cyanide tanks around the welds. They weren't
19 really leaks, but there was moisture showing, and it was
20 an alkaline P.H.

21 Q What was alkaline P.H.?

22 A That shows that more than likely it's cyanide, which is
23 an alkaline P.H.

24 Q The moisture on the --

25 A Right, the moisture on the outside of the tank.

1 They are instructed to check all the tank area and
2 the perimeter of the plant. Any noticeable leaks, they
3 were to contact the manager or the second in command,
4 whoever it was at that time, actually there were three
5 people they could call, and told what action to take.

6 Q Did they have any plan in case there was a release?

7 A There was in case of a major tank rupture, what we
8 called a contingency plan. Everybody was given a copy
9 of it, asked if they understood it, what they were
10 supposed to do, and they -- I think everyone signed a
11 paper stating that they understood what they read.

12 Q Did you ever notice any actual leaks of cyanide while
13 you were there?

14 A There were some on one occasion. There was a leak from
15 one of the tanks. It wasn't a real major one.

16 Q Can you recall which tank?

17 A Not really for the simple reason these liquid's been
18 transferred back and forth between tanks in order to
19 make repairs is what it was.

20 Q Okay. Do you recall how frequently repairs were made to
21 tanks?

22 A Originally, like tank 8-A, 6-A, 28, those were -- 28 and
23 8-A had originally been on acid service, okay. The
24 liner -- rubber lining in it for acid service went bad,
25 so they decided to rinse them out, take them over, and

1 use them for cyanide, but any metal repairs that had to
2 be done would be done then.

3 They were more or less spares, so if you did get a
4 major leak or -- you know, anything more than moist is a
5 major leak supposedly, so it would be transferred into
6 that. It wasn't real often that repairs were made.
7 They were all done originally on the tanks, and that was
8 it.

9 Q Can you describe, are there tanks used at the site to
10 store -- or that contain solvents?

11 A Yes. Tank 2, D-1, 15, and 25. There's an F tank
12 located next to tank 19. I think that's the one that
13 had the dirt in it, solvent dirt they called it.

14 Q Sorry, I should have asked you for the cyanide spill.
15 Do you recall when that occurred?

16 A No, not offhand.

17 Q Do you recall whether there were any major spills,
18 releases from the solvent tanks?

19 A Yes. Tank 15, at one time, the valve broke loose from
20 it.

21 Q And do you recall when that occurred?

22 A I think it was late '70s, early '80. Early '80s.

23 Q Describe what happened during that release?

24 A The majority of the liquid -- as far as I know, it was
25 all contained in this area around tank 20. It was then

1 pumped off of there. They contacted a contractor, I
2 don't know which one it was, with the vacuum truck to
3 come and pull the material off into a tank to hold it, a
4 different tank until we repaired tank 15.

5 I know the Board of Health from Indiana was
6 contacted because there was a representative there
7 almost every day checking the clean-up procedure. Like
8 I said, this tank F has the dirt that we did scrape off
9 the ground. He told us just put it into a contained
10 vessel; which it's been there ever since.

11 Q Were there any other major spills or leaks in the
12 solvent area tanks?

13 A No.

14 Q Let me go back to the tanks that were used to either
15 store the finished what you call ferric chloride or the
16 spent solvent liquor.

17 Were there ever any leaks or small leaks in those
18 tanks?

19 A At times there were small -- in the reactor tanks there
20 were. C-B-3, we did have a leak once or twice in that.

21 Q What about in the storage tanks that were used to
22 contain the ferric chloride?

23 A On occasion.

24 Q When you developed a leak, would the leaking remain
25 constant or --

- 1 A As soon as the leak was developed, it was immediately
2 transferred to another tanker. If there wasn't room,
3 we'd transfer it into our tankers just to make room so
4 it wouldn't leak. At least drop them below liquid level
5 or where the leak was rather.
- 6 Q Would the leak increase in size before you could do
7 that, or --
- 8 A If you didn't pump it immediately, it would.
- 9 Q Can you give any estimate of -- with the type of
10 material, would the rate at which a leak would increase
11 vary?
- 12 A Depending on the temperature of the material, the volume
13 of liquid in the tank. If the leak's on the bottom,
14 you've got 20,000 gallons, of course, it's going to leak
15 faster than if you got 2,000 gallons on top of it. It
16 varies. Whatever happens, depends where the leak's at
17 in the tank.
- 18 Q Would the hole or whatever in the tank increase in size?
- 19 A It did.
- 20 Q Is that frequently, or would that again depend on the
21 material?
- 22 A Oh, just about every time a leak occurred, the hole
23 would increase in size before you drop the liquid below
24 that level. But not -- I don't mean it went from the
25 size of a dime to a basketball, you know; it's nothing

1 like that extreme.

2 Q Now, do you know whether in referring to the two-hour
3 inspection that was supposed to be performed around the
4 perimeter of the site, was that to your knowledge done
5 regularly? Were there times when it wasn't done?

6 A It was supposed to have been done. I don't think it was
7 regularly.

8 Q Would you describe -- I believe you indicated that you
9 built up an area around tank 20 in the 1980s. Were
10 there any other areas on the site that you either built
11 up dikes or other bermed areas?

12 A This basin 19 area, we diked up around that for the
13 simple reason the liquid level in that basin was rising,
14 and there was a fear that it would run over into another
15 area.

16 Q And do you recall when you added the dikes to that area?

17 A Did it on a couple different occasions. It was, I think
18 the first -- first time was about '83 or '84, and then
19 we did it again in '85.

20 Q Did you ever add any diked area around tank 22?

21 A That was dredged out. The material in it was dredged
22 out, and I think that was spring of '85 or winter of
23 '84.

24 Q Was that by Conservation Chemical?

25 A Yeah, we contracted a company to do it.

1 Q And why was that done?

2 A Contracting it?

3 Q The dredging activity?

4 A We were told we had to increase the capacity of the
5 holding area.

6 Q Do you recall, were there any spills or releases from
7 the pond 19 area beyond the containment area in pond 19?

8 A Not that I know of.

9 Q So you don't recall any where they would have either
10 gone in another ponded area or --

11 A Un-un. No.

12 Q And were there any other diked areas that you added or
13 that were present at the site in the 1980s?

14 A Just tank 20, tank 19, and that small containment area
15 near the process sump.

16 Q Was there any berm around the cyanide tank area?

17 A A small, very small one.

18 Q Do you know like what happened to materials removed
19 around the tank 20 area if you indicated that in the
20 1980s?

21 A From the solvent spill?

22 Q Yeah.

23 A The liquid that was pumped out, it went into a vacuum
24 truck from this contractor. We pumped it into another
25 storage vessel which was located directly across the

1 roadway from tank 20 then. So, it was like pump into a
2 vacuum truck; then they'd shoot it directly into this
3 tank.

4 The dirt or whatever, sludging material was left,
5 we scraped up and put into this F tank. I think it's
6 the F -- it's either the F or the 11 tank. One of the
7 two.

8 Q And is that material and the liquid still at the site?

9 A Yeah.

10 Q Did you ever -- turning now to any discussions you may
11 have had with Mr. Hjersted, did you discuss the ultimate
12 fate or what C.C.C.I. intended to do with the materials
13 in the impoundments or in the ponded areas, pond 19 area
14 first?

15 A We were supposed to -- only thing I discussed with Mr.
16 Hjersted about the pond 19 was treating it when the P.H.
17 was -- had gone to about a 3 --

18 Q Uh-huh.

19 A -- and we did that.

20 Q Did he ever discuss what he was ultimately going to do
21 with the material in that pond?

22 A We -- I think we sent samples of that to one of these
23 firms in the area. I don't know whether we received
24 results, but that was, you know, late '85, so he may
25 have heard something after I left.

1 Q What about -- did you have any discussions concerning --

2 MR. SIERKS: Just a second.

3 (Conference between counsel not within
4 hearing.)

5 MR. SIERKS:

6 Q Do you recall why the sampling was taken --

7 A Of the --

8 Q -- of the material in pond 19?

9 A Just told to draw samples.

10 Q You didn't know whether that was for ultimate disposal
11 purposes?

12 A No. Not really.

13 Q Turning to the pie basin again, do you recall any
14 discussions concerning what was to be done with the
15 material in the pie basin?

16 A No.

17 Q What about the material in -- or around tank 20?

18 A The material in tank 20?

19 Q First, let's go for any materials around tank 20.

20 A What we did with material around tank 20 was to dig it
21 out and make a dike out of it. That's the only thing I
22 was told.

23 Q Did you ever have any discussions concerning the
24 material in the off-site basin noted on Exhibit 5?

25 A No.

1 Q I'm sorry, that might be Exhibit 1.

2 A There were -- like I said, we had a piece of pipe. It
3 was an old stack pipe from our old boiler that was
4 laying there. I was told to bring that over to our
5 property. I don't know who put it there originally, but
6 that's the only discussion I've had about that.

7 Q Do you know whether there is any impervious lining or
8 layer under any of these ponds that we've been referring
9 to, the pie basin or the tank 19 area, off-site basin
10 and tank 20 or tank 22?

11 A Not that I know.

12 Q Do you recall any discussions you had with Mr. Hjersted
13 about R.C.R.A. requirements that may have been
14 applicable to the site?

15 A I received a basic presentation from him. Basically,
16 what we did, we went over our Part B.

17 Q Part B, permit application?

18 A Right. And whatever was in there, we went over. I
19 didn't go through the regulations book in any detail,
20 no.

21 Q And what did you discuss when going through the Part B
22 application?

23 A Basically to understand about manifests. What to do in
24 case of an emergency, you know, like a spill, who to
25 contact, what to do. That type of thing. Like I say,

1 we didn't go into any real detail.

2 Q Was it these discussions when you were the plant manager
3 or before you became plant manager?

4 A I talked to Mr. Hjersted before I was permanently
5 manager, and I talked to Floyd Keiser afterwards. We
6 went over the -- basically the same material.

7 Q And who's Floyd Keiser?

8 A I guess he's vice president, Conservation Chemical, I
9 think. Administrative manager; number two honcho.

10 Q Can you describe what your duties were as plant manager
11 with respect to, like R.C.R.A. compliance?

12 A Basically to make sure that all manifests were filled
13 out completely. We kept accurate logs of the incoming
14 material from the time it was picked up at the generator
15 until the time it went into process, and make sure all
16 this was kept up to date.

17 Q Were manifests received from spent pickle liquid
18 shipments coming into the site?

19 A Right.

20 Q Do you know if manifests were prepared by Conservation
21 Chemical for shipments, material off the site?

22 A The only thing we shipped off was ferric chloride.

23 Q Were manifests prepared for that?

24 A No.

25 Q And was any other material that you recall taken off the

1 site during the 1980s?

2 A Well, ferrous chloride.

3 Q And how was that taken off the site?

4 A By truck load.

5 Q Where did that material --

6 A It went to waste treatment, same as the ferric chloride.

7 It was used for the same purpose.

8 Q Was the ferrous chloride spent pickle liquid or was a
9 different --

10 A Exactly the same thing.

11 Q Why did you ship that off-site?

12 A They used it to treat sewage.

13 Q And did you manifest the ferrous chloride?

14 A No.

15 Q In the manifests you received from the generators of the
16 spent pickle liquid, where did you keep those records?

17 A In the office at Gary.

18 Q What were you told to do with the manifests?

19 A The operators on duty were to sign when they received
20 the load, and I signed once. Went through the manifest,
21 what was on it, the gallons they stated and our log book
22 to make sure they correlated. Sign it and it was filed
23 away. Now, the woman in the office may have done
24 something else with it, but as far as -- only thing I
25 did, was check the numbers and the -- and sign it.

1 Q As far as the Part B permit application, did you have
2 any role in preparing any of the information such as the
3 waste inventories or what was present at the site?

4 A No.

5 Q And do you recall any discussions with Mr. Hjersted
6 about R.C.R.A. closure requirements for the site?

7 A Not with Mr. Hjersted personally, just what I read
8 through in this Part B, and I didn't study it every
9 night.

10 Q Will you briefly describe what kind of training you
11 received when you became plant manager in environmental
12 compliance areas?

13 A None. No training before; just on the job. No formal
14 training.

15 Q Whose responsibility -- did you have any authority to
16 spend money for environmental compliance measures that
17 were necessary at the site?

18 A I had authority to spend up to about \$800 without
19 approval from Mr. Hjersted.

20 Q And one general question. For the tanks and the drums
21 that are in the area, to your knowledge are any of those
22 tanks or drums located on pads or concrete or anything
23 as opposed to the soil surface?

24 A Some of the tanks in the process area are on concrete.

25 Q What about other than in the process area?

1 A To my knowledge, no.

2 Q Do you have any discussions with Mr. Hjersted about
3 installing a fence around the site?

4 A Yes, we did. We purchased approximately 1500 to 2,000
5 feet of used fence, and we were planning on putting this
6 up just before the oil leak in tank 19 and the E.P.A.
7 came in and -- I think it's still at the facility now.

8 Q What type of fence was that?

9 A It was eight-foot cyclone fence.

10 Q And do you know why it wasn't put up then?

11 A From what I understood just from talking with the
12 on-site coordinator, once they came in and all these
13 other generators, whatever, had contacted and talked
14 things over, some of the generators were going to take
15 responsibility for putting a fence up which is why there
16 are still 1500 feet of fence lying there.

17 Q Getting back to the expenditures and money, do you
18 recall whether during your term as plant manager or in
19 the in the '80s you spent an amount of money to comply
20 with R.C.R.A. requirements?

21 A I don't really think so. I'm not sure which
22 requirements you're talking about.

23 Q Other than building dikes or preventing leaks, would you
24 have spent money to --

25 A We spent money on the fence. That's about all I know

1 of.

2 Q Were any new tanks brought to replace older tanks or
3 drums?

4 A We -- there were drums bought. This was early '80s to
5 redrum some deteriorated ones.

6 Q Was there any money spent on either to treat -- other
7 than the treatment you described, to treat or off-site
8 dispose of any of the waste at the site?

9 MR. RUNDIO: Excuse me, could I have the
10 question read back? Just didn't hear.

11 THE COURT: Was there any money for off-site
12 disposal of drums. Wasn't that the question Mr. Sierks?

13 MR. SIERKS: Yes.

14 THE COURT: You may answer that.

15 A For off-site disposal?

16 MR. SIERKS:

17 Q Yes, for off-site disposal of material and drums and
18 tanks?

19 A During what period?

20 Q The 1980s.

21 A I think in the early '80s we did send some drums out.

22 Q Do you recall any other times?

23 A Maybe in late -- late '70s, early '80s.

24 MR. SIERKS: Your Honor, if I can have a
25 minute, I'm just about done here.

1 THE COURT: Why don't we take our morning
2 break then. We'll start again at quarter of.

3 THE CLERK: All rise.

4 (Short recess.)

5 (The hearing was resumed and the following
6 proceedings were had, reported as follows:)

7 THE COURT: Anything else?

8 MR. SIERKS: I have three more questions, Your
9 Honor.

10 CONT'D DIRECT EXAMINATION BY:

11 MR. SIERKS:

12 Q Mr. Grimmett, can I ask you, is there any waste
13 containing plating materials on the site?

14 A What do you mean by plating?

15 Q Plating wastes referred to --

16 A Cyanide plating wastes?

17 Q That will be some of it.

18 A Yes.

19 Q Do you recall where those are stored?

20 A In the tanks designated as cyanide storage.

21 Q Are there any like neutralized or treated plating wastes
22 stored at the site?

23 A Tank 20.

24 Q Tank 20. And do you know how that was treated?

25 A With a lime slurry in a neutralization tank.

1 Q And was that in the 1970's that was treated?

2 A Early '70s.

3 Q And did that material leak out at all in the 1980s?

4 A From tank 20? Through those two holes that I mentioned
5 when we pumped the process sump in after we treated it.

6 Q And then turning to the neutralization -- or the
7 treatment in the sump area, can you describe where you
8 placed the lime slurry in the process?

9 A I'll call it the west end of the process sump.

10 Q That was near where the second pump was located, or was
11 there one pump that was --

12 A Just one pump in the process sump.

13 Q That was where the material would re-enter?

14 A Right. We would add the lime slurry right at the pump.
15 It would -- it would then pump what would be a higher
16 P.H. material to the other side of the process sump.

17 Q And was the lime slurry added in the top of the sump
18 area --

19 A Right. It was just dumped into it.

20 Q -- in the western corner?

21 A Right.

22 Q One other question. Do you have any opinion based on
23 your experience at the site of how the P.H. in the
24 ponded area around tank 19 got to be at a low P.H. level
25 that you described?

1 A Obviously someone didn't treat the process sump
2 correctly, and pumped it out into the holding basin.

3 MR. SIERKS: Your Honor, at this time I'd like
4 to move for admission of Exhibits 25 and 26.

5 MR. RUNDIO: No objection, Your Honor.

6 THE COURT: Show 25 and 26 as admitted.

7 (Whereupon, documents previously marked
8 Plaintiff's Exhibit 25 and 26
were admitted in evidence.)

9 MR. SIERKS: Your Honor, I have no further
10 questions at this time.

11 THE COURT: Mr. Rundio.

12 CROSS-EXAMINATION BY:

13 MR. RUNDIO: I just have a few questions.

14 Q You testified earlier about some spills during the
15 transfer of pickle liquor or ferric chloride in the
16 process area. And I take it those spills were, if I
17 understood your testimony correctly, they were put into
18 the process sump. This spilled material would go into
19 the process sump.

20 A Right.

21 Q That is a different situation than from the one spill
22 you indicated occurred on the railroad track. That was
23 a one time incident of a tank car?

24 A That I know of, yes.

25 Q And that was product, ferric chloride?

- 1 A (Witness nods head.)
- 2 Q You have to answer yes.
- 3 A Yes.
- 4 Q That material was neutralized on the spot?
- 5 A Yes.
- 6 Q With lime?
- 7 A Lime, bag lime.
- 8 Q Were there any other incidences where you would use bag
- 9 lime to neutralize outside of the process sump and
- 10 outside of this railroad situation?
- 11 A If we did on occasion have a hose that we hooked to the
- 12 tankers to unload, if there was a drip and it was any
- 13 large amount, we would -- there was always one or two
- 14 bags of this lime material in the unloading area.
- 15 They'd scoop some up and add it to wherever it spilled
- 16 at.
- 17 Q A spot type thing?
- 18 A Right.
- 19 Q Then what would you do with that lime material?
- 20 A It sat on the ground.
- 21 Q If I understood your testimony correctly on the gland
- 22 water, the pressure of the cooling water was at all
- 23 times higher than the pressure of the process material?
- 24 A Right.
- 25 Q So that would create a positive pressure into the

1 process material?

2 A Yes.

3 Q Let me move on to something else.

4 The cement tank in the ground which I guess I have
5 called an A.P.I. separator, is that a term you're
6 familiar with?

7 A Yes.

8 Q If I understood your testimony, at some time in the
9 '70s, material leaked from tank 20 into that area there?

10 A Yes, it did.

11 Q And that's what was taken out?

12 A Yes.

13 Q Was that the only time that material was taken out of
14 the A.P.I. separator that you know?

15 A That I know of, yes.

16 Q And that's the only time material was put into the
17 A.P.I. separator, whatever it was from tank 20?

18 A That I know of.

19 Q All right. And to your knowledge that was the
20 neutralized material from tank 20?

21 A Yes.

22 Q Do you know a Bill Simes of the U.S. E.P.A.?

23 A Yes, I do.

24 Q And he was the U.S. E.P.A.'s on-the-scene coordinator?

25 A Yes.

1 Q Did you ever have a discussion with him about the cilica
2 tetrachloride?

3 A Not with Mr. Simes. I talked with Mike Hisling.

4 Q I'm not familiar with him. Who is he?

5 A I'm not really sure what his title was. He was working
6 with the E.P.A.

7 Q What was the discussion about then?

8 A He asked about -- you know, which tank we had the cilica
9 tetrachloride stored in. I explained to him that we had
10 transferred it from an older vessel into this one. I
11 went over the piping setup with him that we had
12 installed, and he told me that they were bringing some
13 tanks in, and they were going to begin treating it on
14 site. He didn't give me a date, but that was about the
15 extent of the discussion.

16 Q To your knowledge did they ever treat that -- E.P.A.
17 ever treat that material on site?

18 A Not while I was there, no.

19 Q Moving on now. I'm sorry I'm skipping around here, but
20 I'll try to direct your attention to what I'm going to
21 ask you about this. This is the spill basin around tank
22 22. You indicated it was enlarged at some time?

23 A Yes.

24 Q And the purpose of that was to increase its capacity?

25 A Right.

1 Q Capacity to hold a spill from tank 22?

2 A Yes.

3 Q And if I understood it correctly, that was done by
4 simply making the hole deeper?

5 A They dredged out the material that was in the
6 containment area, and some of it -- or most of it went
7 on top of the existing dike, so --

8 Q Just put it on the dike?

9 A They dug it out and raised the height of the existing
10 wall.

11 Q So you have a higher dike and a lower --

12 A Right.

13 Q And then finally, on the area that we've called the
14 off-site basin over there, you indicated that office
15 garbage was put out there at one point.

16 A Yes.

17 Q To your knowledge was any plant chemical waste material
18 put out there?

19 A No.

20 MR. RUNDIO: I have nothing further, Your
21 Honor.

22 THE COURT: Anything else?

23 MR. SIERKS: Just a couple of questions.
24
25

1 REDIRECT EXAMINATION BY:

2 MR. SIERKS:

3 Q You know, how many hours per day did you work at the
4 site in the 1980s?

5 A That varied quite a bit. At least eight.

6 Q And was the plant open longer than eight hours a day in
7 the 1980s?

8 A Yes, it was. At -- I think in '82 or '83 we went to 24
9 hour day manufacturing.

10 Q So, you were not present at all times the facility was --

11 A I was not personally, no.

12 Q And turning to the areas where you had spills that you
13 added lime to, did you ever do any testing of the area
14 of the spills?

15 A I did once or twice with P.H. paper.

16 Q Did you ever test for anything other than P.H. in those
17 areas?

18 A No.

19 Q And getting back to the pressure in the gland water
20 pumping, if there was positive pressure into the process
21 water, do you have any opinion as to how the gland water
22 itself would get a lower P.H.?

23 A Well, if the packing wears out, it will allow the
24 packing -- the water, gland water to go directly through
25 instead of lubricating the packing. And that will allow

1 the acid from the pump itself to seep through and it
2 will more or less pull it -- pull the acid through with
3 it.

4 MR. SIERKS: No further questions, Your Honor.

5 MR. RUNDIO: Nothing else.

6 THE COURT: All right. Thank you.

7 (Witness excused.)

8 THE COURT: I assume Mr. Grimmett is released.

9 MR. SIERKS: Yes, Your Honor.

10 THE COURT: Call your next witness, please.

11 MR. SIERKS: Your Honor, we'd like to call
12 Sally Swanson.

13 (Witness duly sworn.)

14 THE COURT: Do you need 25 and 26?

15 MR. MCPHEE: Do I need those Exhibits, Bill?

16 (Indicating.)

17 THE COURT: Thank you.

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1 SALLY SWANSON,
2 called as a witness by the Plaintiff, being
3 first duly sworn to testify the truth, the whole truth
4 and nothing but the truth, was examined and testified
5 as follows:

6 DIRECT EXAMINATION BY:

7 MR. SIERKS:

8 Q Would you state your full name and address for the
9 record?

10 A My name is Sally K. Swanson. My address is 5251 North
11 Saint Louis Avenue, Chicago.

12 Q And where are you presently employed?

13 A I'm presently employed at the U.S. E.P.A., Region 5
14 office, in the Waste Management Division, R.C.R.A.
15 Enforcement Section.

16 Q And what's your title or position at this time?

17 A My title is Chief Enforcement Programs Unit Two, and
18 that's within the R.C.R.A. Enforcement Section.

19 Q Can you describe your duties and responsibilities as
20 chief of that enforcement unit?

21 A My primary duties are to supervise a staff which is
22 responsible for implementing enforcement procedures for
23 the R.C.R.A. program and also to overview state
24 activities in implementing the R.C.R.A. program.

25 Q Are you involved with policy development at all?

 A I have been in the past. I'm more directly involved in
 policy implementation at this point.

1 Q Do you have any oversight responsibilities of state
2 programs, activities?

3 A Yes, I do. I'm involved in evaluating the programs for
4 the states of Indiana, Ohio, and Minnesota on a
5 quarterly basis.

6 Q Can you describe what you evaluate as far as their
7 programs are concerned?

8 A I would evaluate the quality of their programs, the
9 quality of the inspections that the states are doing. I
10 would evaluate whether or not they did all the
11 activities that they committed to do in their work plan
12 agreement with us.

13 Q And can you describe in a little more detail what
14 involvement you have in enforcement actions generally
15 under R.C.R.A.?

16 A At the present time?

17 Q Yes?

18 A At the present time, I would be most frequently involved
19 in supervising employees that are developing enforcement
20 actions, and also providing advice to them in procedural
21 matters and in the course of attempted settlements of
22 enforcement actions.

23 I'm also involved directly in some enforcement
24 actions that I worked on prior to assuming my present
25 position, such as this particular case.

1 Q Can you estimate how many hazardous waste sites you've
2 been on, more than very generally involved with, become
3 familiar with them, conducted inspections and whatever?

4 A Through the course of conducting inspections and taking
5 enforcement actions, probably at least sixty.

6 Q And how long have you been the chief of that Enforcement
7 Unit Two?

8 A Since early December, 1985.

9 Q And did you previously work for E.P.A.?

10 A Yes, I did. I've worked for E.P.A. since March of 1980.

11 Q And what other position or positions have you held?

12 A My title throughout that period from 1980 till 1985 was
13 Environmental Protection Specialist.

14 Q Can you describe what your duties were as Environmental
15 Protection Specialist during that time?

16 A When I first started with E.P.A. I was in the
17 Enforcement Division, and my duties and responsibilities
18 then were to do evaluations of the State of Indiana and
19 Wisconsin water pollution control program -- or
20 enforcement part of their water pollution control
21 program, and also when the R.C.R.A. regulations were
22 first promulgated, to get familiar with the R.C.R.A.
23 regulations and then get involved in R.C.R.A.
24 enforcement as well.

25 In 1982, the Enforcement Division was abolished,

1 and I was transferred into the Waste Management Division
2 where the majority of my duties involved enforcement
3 related work in the R.C.R.A. program.

4 Q Would you describe what types of enforcement activities
5 you had in the R.C.R.A. program then?

6 A The duties varied from developing compliance orders and
7 then negotiating settlements on those compliance orders.
8 I did inspections at hazardous waste facilities. I also
9 accompanied state inspectors to do what we called
10 oversight inspections where I would actually evaluate
11 the state inspectors' performance at an inspection at a
12 hazardous waste site. I also participated in the
13 quarterly evaluations of the state programs for, at that
14 time, Indiana and, for part of that time, Illinois.

15 Q Okay. Did you work anywhere prior to coming to E.P.A.
16 in 1980?

17 A Prior to coming to E.P.A. in 1980 I was employed by the
18 bi-state Metropolitan Planning Commission, in Rock
19 Island, Illinois.

20 Q And what were you there, that position?

21 A My title at bi-state was Assistant Planner, and I was
22 primarily responsible for land use in environmental
23 planning.

24 Q Will you explain your educational background since high
25 school?

1 A I have a bachelor of arts degree in geography from
2 Augustana College, Rock Island Illinois.

3 Q Did you have any emphasis with that degree?

4 A I took courses in physical geography and in geology, and
5 I also took courses that would relate to geography -- I
6 took geography courses that specifically related to
7 man's impact on the environment and on the land.

8 Q And have you had any training courses or professional
9 development courses since college?

10 A Yes, I have. I've had numerous courses.

11 Q Okay. I'd like to show you what's been marked as
12 Plaintiff's Exhibit 27, and ask if you can identify
13 that?

14 A Yes. This Exhibit is a page from my one-seventy-one,
15 which is sort of the federal form for your resume.
16 Instead of preparing your own, you write this. And this
17 is a list of the training courses that I took between
18 1978 and 1985, the summer of 1985. Since I completed
19 this form, the only other training courses I've taken
20 have been supervisory or management training courses.

21 MR. SIERKS: And in order to save time if
22 Defendant doesn't have any objection, I'll just have
23 this admitted into the record for the training courses
24 rather than have her describe them.

25 MR. RUNDIO: No objection.

1 THE COURT: Show Plaintiffs 27 as admitted
2 then.

3 (Whereupon, documents previously marked
4 Plaintiff's Exhibit 27
were admitted in evidence.)

5 MR. SIERKS:

6 Q Turning back to your responsibilities under R.C.R.A.,
7 does your present position as Chief of the Enforcement
8 Unit Two Section and your previous responsibility as
9 Environmental Protectiont Specialist require you to have
10 a detailed knowledge of R.C.R.A.?

11 A Yes, it does.

12 Q And would you describe, are you familiar with all
13 aspects of R.C.R.A., or do you have a concentration in
14 particular areas?

15 A I would hesitate to say I'm familiar with all aspects of
16 R.C.R.A. because it's a very complex program. For
17 example, I would not be very familiar with, for example,
18 some of the chemical properties of hazardous wastes we
19 regulate. I don't have training as a chemist.

20 However, I am familiar with the regulations. I'm
21 familiar with the agency's policies and how the
22 regulations are to be implemented, and I'm familiar with
23 procedures used to evaluate facilities for compliance
24 with the regulations. I'm also familiar with the
25 statutes of R.C.R.A.

1 Q And your duties as chief now, are you required to
2 interpret and apply the regulations to specific sites?

3 A Yes, I am.

4 Q Are you familiar with the Conservation Chemical site in
5 Gary, Indiana?

6 A Yes, I am.

7 Q Can you describe how you first became involved with that
8 site?

9 A In the summer of 1983, my supervisor at the time
10 assigned the case to me or assigned the facility to me
11 for evaluation and follow up.

12 Q What were your first duties in connection with
13 Conservation Chemical?

14 A My first responsibilities were to get familiar with the
15 information that we had in our files on the facility and
16 to be familiar with the site.

17 Q In the course of your review, are you familiar with the
18 official records of E.P.A. that were contained in the
19 Conservation Chemical files in 1983?

20 A Yes.

21 Q I'd like to hand you what's marked for identification as
22 Plaintiff's Exhibit 28 and ask if you can identify that?

23 A This is a copy of the notification form which
24 Conservation Chemical submitted to U.S. E.P.A.

25 Q And was this a copy that was contained in E.P.A.'s

1 official files?

2 A Yes.

3 Q Can you -- does this form indicate who signed the
4 notification on behalf of Conservation Chemical?

5 A Yes, it was signed by Lloyd T. Keiser.

6 Q What was the date of signature?

7 A Date of signature was August 18th, 1980.

8 Q Would you describe or explain what this notification
9 form indicates to the agency?

10 A In August -- by August 18th, 1980, all --

11 MR. RUNDIO: Your Honor, can I object. If I
12 understand it, it's an E.P.A. form and probably by
13 regulation, I don't think that this witness'
14 understanding of what it means to the E.P.A. is
15 relevant. If it's a required form, the regulations say
16 what it's required for. I don't think that her
17 testimony is relevant.

18 THE COURT: Objection overruled.

19 A Could you repeat the question, please.

20 MR. SIERKS:

21 Q Yes. E.P.A. uses this as an official E.P.A. form. I'd
22 like you to describe what type of information E.P.A. in
23 your line of work you know E.P.A. seeks to learn through
24 this form?

25 MR. RUNDIO: Your Honor, I object. I think

1 the form has questions on it that have to be answered.
2 E.P.A. --

3 MR. SIERKS: I'm asking her to describe what's
4 in the official records of E.P.A.

5 MR. RUNDIO: This form is in the official
6 records of E.P.A. I will grant you that.

7 THE COURT: But the purpose of the form. She
8 can testify to the purpose of the form. Show the
9 objection as being overruled.

10 A The purpose of the form was -- if I can answer in a
11 slightly different way, any -- any business or any
12 industry in the country was required to submit one of
13 these notification forms if they generated, transported,
14 treated, stored or disposed of hazardous waste at their
15 facility.

16 MR. RUNDIO: Your Honor, can I move to strike
17 the answer. It's not responsive, number one, and number
18 two, it sounds to me that she is simply parroting either
19 a regulation or a statutory requirement. She said they
20 had to do it, and I'm assuming there was some law or
21 regulation saying they had to do it.

22 THE COURT: Show the motion to strike as being
23 denied. You can cover that on cross if you wish.

24 MR. RUNDIO: All right.
25

1 MR. SIERKS:

2 Q And the requirement to submit this notification is
3 contained where, if you know?

4 A The requirement to do so is in the statute, and it was
5 also included in the regulations with the deadline for
6 when it had to be submitted.

7 Q And it was based on your knowledge of these forms, what
8 type of information is contained on this form?

9 A The type of information includes the activity at the
10 site, and it includes the types of wastes managed at the
11 site.

12 Q What type of activity did Conservation Chemical Company
13 indicate it was in on this form?

14 A It indicated it was a transporter, and that it was a
15 treat-stored, disposed facility.

16 Q For hazardous waste?

17 A For hazardous waste.

18 Q And what types of waste did it describe that were
19 present on this form?

20 A It listed several types of waste, and if I can just
21 characterize them, do you want me to characterize them
22 generally or --

23 Q Yes, at this time. We'll get into more detail later.

24 A The waste included waste solvents. Cyanide bearing
25 plating wastes, a waste that's known as slop oil

1 Q And what was the date of signature?

2 A November 18th, 1980.

3 Q Would you briefly describe as you're going through
4 Exhibit 29 what type of information is indicated on this
5 Exhibit?

6 A It contains information about the processes at the
7 facility, what specific types of processes there were,
8 and what the capacity for those processes were.

9 Q And what processes -- these are hazardous waste
10 processes?

11 A Yes.

12 Q What processes are indicated for this facility?

13 A Indicated that the processes were storage in containers,
14 storage in tanks and treatment in tanks.

15 Q And does it indicate how many tanks or capacity?

16 A It wouldn't indicate a specific number of tanks, rather
17 it would indicate the total capacity of those tanks.

18 Q And what is the total capacity indicated on this form?

19 A Okay. For -- for storage in containers, it indicates
20 100,000 gallons. For storage in tanks it indicates
21 620,000 gallons. And for treatment in tanks, it
22 indicates 25,000 gallons per day.

23 Q Does this form indicate that any wastes are contained in
24 surface impoundments or other units similar to surface
25 impoundments already at the site?

1 A No, it does not.

2 Q Turning to page four of that form, would you describe
3 what information is contained on that page?

4 A I'm sorry, which page is page four?

5 Q That contains a listing by letter beginning F-O-O-1?

6 A I think it's indicated as page 3 of 5.

7 Q I'm sorry. That's actually page 5 of the Exhibit. It
8 contains a page of 3 of 5 indication at the bottom.

9 A All right.

10 Q Would you describe what type of information is on that
11 page?

12 A This page would contain information about quantities --
13 or estimated annual quantities of the waste specifically
14 handled at the facility and what of those quantities are
15 handled in the various processes.

16 Q Can you briefly describe what quantities of waste are
17 indicated on that page?

18 A For F-O-O-1, which is, I believe, spent solvents, it
19 indicates 260 tons stored in tanks. So that would be
20 annually.

21 For F-O-O-2 which is also spent solvents. it's
22 indicated that the amounts of those solvents are
23 included with the previous amount. It's the same for
24 F-O-O-3 and F-O-O-5 so all of those quantities would be
25 contained or included with the 260 tons stored in tanks.

1 F-O-O-6 is estimated at 2,000 tons stored in tanks.
2 K-63, which is pickle liquor sludges, are included
3 with the 2,000 tons stored in tanks above.

4 F-O-O-7, 8 and 9 are all cyanide bearing plating
5 wastes in various forms. And those wastes are combined
6 as 450 tons stored in tanks.

7 And then it lists K-49 which is slop oil emulsion
8 from oil refining industry, 285 tons stored in tanks.
9 And the last is K-0-62 which is spent pickle liquor,
10 15,000 tons stored in tanks and treated in tanks.

11 Q That listing or the waste code number you're referring
12 to F-O-O-1 and following, can you describe what that
13 represents under R.C.R.A. program. Is this a listed
14 hazardous waste?

15 A Yes, it is.

16 All of the numbers are -- the waste identification
17 codes that I just gave are identifications for listed
18 hazardous wastes, and they are found in the Federal
19 regulations and also in the state regulations.

20 Q Would you briefly describe how a waste comes to be
21 listed in the Federal Register if you know?

22 A Prior to being listed in the Federal Register a waste or
23 a waste stream from specific industries are evaluated
24 for their hazardous properties. A background document
25 would be prepared that explains the agency's information

1 about the waste and its rationale for listing it. It
2 would then be proposed to the Federal Register. A
3 public comment period is allowed, and then it eventually
4 would be promulgated onto the list of hazardous wastes.

5 Q And those lists are found in the Federal Register?

6 A Yes.

7 Q Are there other types of waste other than listed waste
8 that are treated as hazardous under R.C.R.A.?

9 A Yes, there are. There are wastes -- a category of
10 wastes called characteristic waste, and they don't come
11 from the specific kinds of sources or the specific kinds
12 of waste streams that characteristic wastes come from.
13 Rather they are hazardous simply because they exhibit
14 one of the four characteristics of hazardous wastes.
15 And those characteristics would be ignitability,
16 corrosivity or reactivity, or what they call E.P.
17 toxicity meaning it contains heavy metals or pesticide
18 residues.

19 Q How is a characteristic waste or hazardous waste
20 determined to be as hazardous?

21 A It's determined by sampling or testing the material to
22 determine whether or not it meets any of those
23 characteristics, and the regulations contain specific
24 criteria for -- and limits. For example, for ignitable
25 wastes there's a flash-point. For E.P. toxic waste, the

1 types of metals that are regulated are shown with an
2 allowable concentration limit.

3 Q And who makes the determination or does the testing to
4 determine whether a waste is characteristic under the
5 regulations?

6 A That's the requirement of the generator of the waste.

7 Q And is it accurate then to say that there are two types
8 of hazardous waste, either a listed hazardous waste or a
9 characteristic waste under R.C.R.A.?

10 A I would prefer to say there are two categories of waste,
11 yes, listed and character -- listed and characteristic,
12 excuse me.

13 Q And the listed wastes applied to what particular
14 industries or what particular waste streams, did you
15 indicate?

16 A Generally speaking, yes.

17 Q And the characteristics are for other types of waste
18 that are not covered by listed wastes?

19 A Yes.

20 Q And their responsibility is of the generator of a waste
21 to determine whether it would meet the characteristic
22 properties listed in the Federal regulations?

23 A Yes.

24 Q Would the Part A application also list any
25 characteristic wastes which were handled at the

1 facility?

2 A Yes, it should.

3 Q Are there any characteristic wastes listed in the Part A
4 application, Exhibit 29?

5 A To my best knowledge, no. They are all listed wastes.

6 Q And how many listed hazardous wastes are contained in
7 the Part A?

8 A In the Part A that I'm looking at right now, 11.

9 Q And turning to the last page of Exhibit 29, is that --
10 can you describe what is contained on that page?

11 A This page contains -- well, it's the page of the
12 application for facility drawing, and it contains a
13 hand-drawn sketch of the facility.

14 Q Is that submitted by the owner or operator?

15 A Yes.

16 Q Permit applicant?

17 A To my best knowledge.

18 Q Would you turn to Exhibit 30 and you previously
19 described that was received by E.P.A. shortly after the
20 Part A permit application, Exhibit 29, was received?

21 A Yes, it was dated -- dated received on November 20th,
22 1980.

23 Q And this contains what again, would you identify it?

24 A This contains some of the pages that were in the
25 previous application. They are reproductions of what

1 was submitted with additional information written on
2 them.

3 Q Can you briefly describe what additional information was
4 indicated in this Exhibit?

5 A The additional information that was provided in this
6 Exhibit includes an additional process design capacity,
7 identified the waste code on that is S-O-4 or S-0-4, and
8 that is storage in a surface impoundment. The quantity
9 is 600,000 gallons.

10 Then on the page that lists out the specific
11 hazardous wastes, estimated annual quantities, it has
12 two additional entries, one is K-O-63, 500 tons stored
13 in surface impoundments, and K-O-49, 2100 tons stored in
14 surface impoundments.

15 Then the last change or addition was to the
16 facility drawing that sketch that I mentioned before, a
17 surface impoundment that -- triangular in shape was
18 added to the south -- the very southern-most portion of
19 the facility where it comes to a point and it was
20 labeled surface impoundment.

21 Q Is it accurate to summarize basically Exhibit 30
22 contains new information relating to a surface
23 impoundment at the site?

24 A Yes.

25 Q You've generally referred to Exhibit 29 as a Part A

1 permit application, is that right?

2 A Yes.

3 Q Could you briefly describe your understanding of the
4 R.C.R.A. permit process as there are obviously other
5 than a Part A permit, there's another part to it, how
6 those different parts relate?

7 A The Part A is the first part of the permit application,
8 and for virtually all treatment storage and disposal
9 facilities that were in existence in 1980, they were
10 required to submit Part A by November 19th, 1980.

11 Q Where was that requirement found?

12 A In 40 C.F.R., part 270. I think at the time though it
13 was part 122. Perhaps it's been recodified since then.

14 Q It's in the Federal Regulations?

15 A Yes, Code of Federal Regulations.

16 Q And that Part A application gave the type of information
17 that you just discussed in Exhibit 29?

18 A Yes.

19 Q **What does Part B application describe and when is that**
20 **submitted?**

21 A **The Part B application actually provides very specific**
22 **facility information. And it's not a form like the Part**
23 **A was. Instead it's a prepared collection of**
24 **information that the facility submits, and the guidance**
25 **or the requirements for what information has to be**

1 provided are found in the Federal Regulations.

2 Q Would you -- can you generally describe, is it more
3 detailed than than the Part A application?

4 A It's much more detailed. It's a rather lengthy series
5 of requirements to give facility specific information on
6 the processes involved and the structures.

7 For example, if there are tanks, they would be
8 required to submit specifications for the tanks. And
9 the information is provided to E.P.A. so that we could
10 write a final R.C.R.A. permit and have the adequate
11 information to write a facility's specific operating
12 permit.

13 Q When is the Part B -- first, let me ask you this: Is
14 there a specific form to be filled out for Part B permit
15 application?

16 A No, there is not.

17 Q How does the owner or operator determine what elements
18 should be in the Part B?

19 A The owner or operator would refer to the Federal
20 Regulations part 270 of 40 C.F.R., and the guidance or
21 the list of requirements is contained at that part.

22 Q Is there any other requirement as to Part A and Part B,
23 the full permit application requirement under R.C.R.A.?

24 A If complete Part A and complete Part B are submitted,
25 yes, that would be the full application.

1 Q And how are they, Part A and Part B applications,
2 reviewed by the agency?

3 A Well, the Part A permit applications were reviewed in
4 1980 and 1981. And they were evaluated by people in the
5 waste management division at that time. And they were
6 checked for completeness, and checked to see if --
7 essentially if they made sense. I was not directly
8 involved with that review process.

9 Q And when is a Part B permit application required to be
10 submitted by an owner or operator?

11 A Well, there are actually three times that it would be
12 required. The first would be if a new facility was
13 being started or was being set up. In other words, a
14 facility that was not in existence or did not have
15 interim status. Now they would be required to submit a
16 permit application at least six months prior to the time
17 that they would want to start up. And then we would
18 review it and prepare a permit for them.

19 The second time that a permit application would be
20 due is when E.P.A. sends what we call a Part B call-in
21 letter, and when we call in the permit application we
22 are in effect giving the facility notice that they have
23 six months in which to prepare and submit their permit
24 application.

25 Now the --

1 Q When were those -- who would receive a notice like that?

2 A The owner or operator would receive the notice.

3 Q Is this an existing facility or a new facility?

4 A Of an existing facility.

5 Q What's the third?

6 A The third time would be when the Part B permit
7 applications were due was November 8th, 1985 for any
8 land disposal facility that had not already submitted
9 it's Part B permit application.

10 Q You talked briefly about a distinction between existing
11 facilities and new facilities. Can you explain in a
12 little more detail how the existing facilities were
13 treated under R.C.R.A., and why they were allowed to
14 continue operating without a permit?

15 MR. RUNDIO: Your Honor, let me object. That
16 sounds to me like it's conjecture or an opinion.
17 There's no foundation been established. I imagine they
18 are treated as a regulation state. I don't know why
19 this witness would have any particular knowledge of
20 that.

21 THE COURT: Show the objection as being
22 overruled.

23 A Could you repeat your question please.

24 MR. SIERKS:

25 Q This is basically relating to your experience, and since

1 you are required to deal with R.C.R.A. regulations, can
2 you describe the reason why or why existing facilities
3 would be allowed to continue operating while they were
4 having permits reviewed, basically what interim status
5 means?

6 MR. RUNDIO: Your Honor, I object. I don't
7 think the E.P.A. made that determination as I understand
8 it. She said it came from the statute. Is she going to
9 testify as to Congressional intent?

10 MR. SIERKS: Her understanding as to the
11 interim status.

12 THE COURT: Show the objection overruled. You
13 can clarify it on cross. She's already testified with
14 her background and experience. I think she comes within
15 the purview of an expert.

16 A Existing facilities or in other words facilities that
17 treated stored or disposed of hazardous waste as of
18 November 19th, 1980 were called existing facilities.
19 And if an existing facility submitted a timely
20 notification which would have been what you showed me as
21 Exhibit 28, and submitted a timely Part A permit
22 application, which was Exhibits 29 and 30, then they met
23 the three requirements for having interim status.

24 Now, if they met those requirements, they could
25 continue to operate as long as they met the requirements

1 set forth in the regulations for interim status
2 facilities.

3 Q There was specific regulations promulgated for interim
4 status facilities?

5 A Yes, there were.

6 Q And they remained effective how long, if you know?

7 A They remained effective until a permit decision is made,
8 in other words to either issue a permit or deny a
9 permit.

10 Q And then were new regulations effected for that facility
11 at that time?

12 A Yes, there would be a different set of regulations for
13 permitted facilities than for non-permitted facilities.

14 Q And you indicated that those three requirements for
15 interim status, were they found in the statute or in the
16 regulations or both?

17 A Both.

18 Q And based on your review of the record, the official
19 files, did Conservation Chemical qualify for interim
20 status in 1980 or '81?

21 A Yes, it did in November of 1980.

22 Q And why is that again?

23 A Because it was an existing facility and it submitted
24 timely notification and Part A permit application.

25 Q I'd like to -- I have really one more background area

1 here. Based on your knowledge, and you've indicated
2 that you've worked with the State of Indiana as part of
3 the R.C.R.A. program, what role does the State of
4 Indiana have in the R.C.R.A. program?

5 A Presently the State of Indiana's role in the R.C.R.A.
6 program is that they are what we call a finally
7 authorized state or a state with final authorization.
8 That means that they have promulgated and passed
9 equivalent regulations. In other words, regulations
10 that are equivalent to ours to regulate hazardous waste,
11 and they have the statutory authority to enforce those
12 regulations.

13 They have a responsibility for interim status
14 facilities, generators for writing permits for R.C.R.A.
15 They've had that final authorization since January 31st
16 of 1986.

17 Q How did they obtain that authorization to your
18 knowledge? Does E.P.A. take any action?

19 A Well, they had to submit an authorization application
20 which was reviewed by both the region and by
21 headquarters.

22 Q E.P.A., you're referring to?

23 A Yes, U.S. E.P.A. Region 5 and also by headquarters of
24 E.P.A.

25 Q And did they take any formal action on that application?

1 A On the final authorization application?

2 Q Yes.

3 A Yes. It was reviewed and it was deemed that they had an
4 equivalent program, that any concerns that we had with
5 the program were addressed in a letter of intent.

6 We published our intent -- or our decision to
7 authorize in the Federal Register. There was a public
8 comment period, and then subsequently the authorization
9 became effective on January 31st of this year.

10 Q So, what regulations are you presently enforcing in the
11 State of Indiana?

12 A Presently we would be enforcing the state's regulations
13 which are equivalent to the Federal Regulations.

14 Q Before the final authorization from the state, did they
15 have any other interim authorization before that time
16 under the R.C.R.A. program?

17 A Yes, they had what was called Phase One interim
18 authorization, and that meant that they had equivalent
19 regular -- or substantially equivalent regulations to
20 the Federal Regulations, and they were able to regulate
21 the activities of generators, transporters and
22 treatment, storage and disposal facilities that had
23 interim status. They did not have permitting --
24 R.C.R.A. permitting authorities under interim -- or
25 Phase One authorization.

1 Q Do you recall when they received that Phase One
2 authorization?

3 A Yeah, they received Phase One authorization on, I
4 believe, August 18th, 1982.

5 Q And at that time regulations other than permitting
6 regulations which were approved by E.P.A. would have
7 been in effect under R.C.R.A.?

8 A For generators, you mean the facility standards?

9 Q Yes.

10 A The regulations that were in effect were the state's
11 regulations which essentially adopted the Federal
12 Regulations by reference. So there would be a general
13 regulation, and then it would cite specifically or go
14 back by reference to all of our regulations.

15 Q Prior to August 18th, 1982 were the Federal Regulations
16 fully effectively?

17 A Yes, they were.

18 Q Does the state have any role in the review of these --
19 the permit applications submitted by Conservation
20 Chemical?

21 A Yes, they did. Under our work agreement with the state,
22 they provided technical reviews and completeness reviews
23 of the permits to us.

24 Q Do they now have the authority to issue the permit?

25 A Yes, they do now.

1 Q Did they before they received final authorization?

2 A No, they did not.

3 Q Is it your understanding that the E.P.A. is authorized
4 to take replacement actions based on the state
5 regulations?

6 A Yes, we are.

7 Q Do you know whether E.P.A. enforces any regulations
8 other than the Indiana state regulations under the
9 Resource Conservation Recovery Act?

10 A Could you be more specific.

11 Q For example, yes, I believe you indicated the November
12 8th, 1985 deadline for requiring submission of a Part B
13 application?

14 A Okay. That's a statutory requirement. The -- there
15 were amendments to R.C.R.A. in 1984. They were
16 effective on November 8th, 1984, and those amendments
17 provided additional statutory requirements for the
18 R.C.R.A. program.

19 Q Are those enforced by E.P.A. rather than the state at
20 this time?

21 A Yes.

22 Q Again, I'd like to turn to the interim status facilities
23 such as C.C.C.I. You indicated already that
24 Conservation Chemical facility in Gary qualified for
25 interim status in 1980 or 1981?

1 A In 1980, yes.

2 Q Briefly I'd like to ask one other background area in
3 recycling. Are you familiar based upon your knowledge
4 of R.C.R.A. whether there are any special regulations
5 under R.C.R.A. which apply to recycling or the reuse or
6 reclamation of hazardous wastes?

7 A Yes, there are. There are certain exemptions for
8 reclamation, reuse and recycling of hazardous wastes.
9 The exemption would cover the material specifically
10 that's being recycled. It exempts specifically the
11 operation itself, the actual recycling operation,
12 however, the exemption does not extend beyond the actual
13 materials recycled and the actual operation.

14 In other words if --

15 MR. RUNDIO: Your Honor, as long as she's
16 paused, can I move as not being responsive. That was
17 not answering the question that was asked.

18 THE COURT: Show the motion to strike as being
19 denied.

20 A The exemption does not extend beyond the recycling
21 operation and the materials directly recycled
22 themselves. In other words if there are any residues or
23 any wastes resulting from recycling, those would be
24 regulated under R.C.R.A.

25 MR. SIERKS:

1 Q Okay. The parties are generally in agreement that spent
2 pickle liquor, ferric chloride was to some extent
3 recycled at the facility.

4 MR. RUNDIO: Your Honor, I object. Spent
5 pickle liquor is recycled ferric chloride --

6 MR. SIERKS: To make ferric chloride which was
7 taken off the site, okay?

8 MR. RUNDIO: (Nods.)

9 THE COURT: Do you have any objection to that?

10 MR. RUNDIO: No, Your Honor, as well as it's
11 understood it was spent pickle liquor was recycled to
12 make ferric chloride.

13 MR. SIERKS: Thanks for qualifying that.

14 Q Do you know whether there are any regulations
15 specifically applicable to the recycling of spent pickle
16 liquor?

17 A Yes, there are.

18 Q Without looking at them, do you happen to recall what
19 the provisions are?

20 A Well, there's a provision that spent pickle liquor which
21 is used for treatment of waste waters is exempted. And
22 there's also a provision that -- I would prefer to look
23 at the regulation itself rather than recite it from
24 memory.

25 MR. RUNDIO: Shall -- are we going to have her

1 testify from a --

2 MR. SIERKS: No, this is a regulation so I can
3 refresh her memory as to what the understanding is.

4 MR. RUNDIO: I don't think so. I don't think
5 her understanding is relevant, Your Honor. She can
6 testify about what she does in the U.S. E.P.A., but we
7 have a regulation which was regularly promulgated by the
8 State of Indiana. I would say it applies or it doesn't
9 apply. Her opinion as to what what applies or what it
10 says or what it means is really not relevant.

11 THE COURT: Are you trying to get the opinion
12 of this particular witness?

13 MR. SIERKS: On the way back I can ask the
14 witness if she's responsible for any role in reviewing a
15 closure plan for the facility.

16 A Yes, I have.

17 MR. SIERKS:

18 Q And in that review role, do you have to determine
19 whether particular hazardous wastes should be addressed
20 at the site?

21 A Yes.

22 MR. SIERKS: Your Honor, I'd argue that her
23 understanding of whether a particular hazardous listed
24 hazardous waste is covered or not covered by R.C.R.A. is
25 relevant in her determination as to whether closure

1 plans should address those wastes and spills and leaks
2 that have occurred.

3 MR. RUNDIO: Her determination doesn't matter
4 worth a wit. It's what the law is and what is required.
5 She's an advocate; she's an enforcer. Of course, I
6 would think she would say, she's here today, that it
7 applies, but that doesn't establish that it does.
8 That's nothing more than argument by counsel being put
9 in through a witness.

10 MR. SIERKS: Your Honor, I'm not putting her
11 on to establish what the regulation means. It's how she
12 in her role as an E.P.A. employee is using the
13 regulation.

14 MR. RUNDIO: Sure, and she's using it wrong.
15 Why should we let her testify as to how she's wrongly
16 using it.

17 THE COURT: I show the objection as being
18 overruled. You can make any arguments you want. You
19 can question her on cross, you'll have a chance to
20 submit findings and briefs and if her opinion is
21 incorrect, I'm certainly not bound by it. The objection
22 is being overruled.

23 MR. RUNDIO: Your Honor, just to clear the
24 record, can I have a standing objection --

25 THE COURT: Sure.

1 MR. RUNDIO: -- to her giving an opinion?

2 THE COURT: I will permit her to testify
3 concerning her opinion as to the regulations that effect
4 the Defendant's business, and as I said, you can submit
5 any authority that you want when you have a chance to
6 brief it.

7 MR. SIERKS:

8 Q Looking at what I have handed you which is a copy of the
9 Indiana Administrative Code for the hazardous waste
10 regulations, is there the regulation in there that you
11 referred to earlier referring to spent pickle liquor?

12 A Yes.

13 Q Can you identify the citation in the Indiana
14 regulations?

15 A Yeah, the citation is 320 I.A.C. 4.1-3-6, 1-I.

16 And that just says that spent pickle liquor which
17 is reused in waste water treatment is exempted, or spent
18 pickle liquor that is being accumulated or treated prior
19 to reuse is exempted.

20 Q And in your role as enforcing or interpreting that
21 regulation, how do you interpret spills or leaks or
22 residues from recycled spent pickle liquor that remain
23 at the site after the recycling operation?

24 A Assuming that a spill or a leak would not be recovered
25 and put back into the process, anything that is

1 discarded or intended to be discarded would be a
2 hazardous waste.

3 Q And you indicated spend pickle liquor is a listed
4 hazardous waste?

5 A Yes, it is.

6 Q Can you briefly describe your understanding of how
7 E.P.A. treats listed hazardous waste, and in particular
8 do they remain hazardous throughout their life cycle or
9 is there a mechanism for making them non-hazardous?

10 A Listed hazardous wastes remain listed hazardous wastes.
11 You can't treat them to render them non-hazardous and
12 have them cease being a listed waste. Even if they are
13 treated, it's still considered a listed waste. The only
14 thing that can be done to change that is to submit
15 what's called a delisting petition to E.P.A.
16 headquarters.

17 And by doing so, a facility owner or operator would
18 request that a specific waste stream be excluded from
19 regulation and would have -- and the owner operator
20 would have to submit documentation that demonstrates
21 that the waste actually is not hazardous.

22 Q So, for spent pickle liquor in particular, using that as
23 an example, you would have to submit -- a particular
24 industry would submit a showing that its spent pickle
25 liquor was not hazardous?

1 A Well, it can be done in one of two ways. It can be done
2 individually by a specific facility, or it can be done
3 or an industry wide basis. For example, trade
4 associations or groups of specific industries have
5 gotten together to petition the delisting of specific
6 treated waste streams.

7 Q And to your knowledge is spent pickle liquor, K-O-62
8 still a listed waste?

9 A Unless it comes from -- directly from and is treated by
10 the steel finishing industry, it is still a listed
11 waste. In other words anyone other than the steel
12 finishing industry which treats the waste itself, it is
13 a hazardous -- listed hazardous waste.

14 Q And has that steel industry treatment been delisted?

15 A Yes, it has.

16 Q And in your review of the official files, have you come
17 across any records of a delisting petition submitted by
18 Conservation Chemical for any waste that they handle?

19 A No, I have not.

20 Q I'd like to give you what's marked as Plaintiff's
21 Exhibit 31 --

22 MR. SIERKS: Can I have that copy back I
23 believe I provided you. This is the only one.

24 MR. RUNDIO: Yeah, I've got a copy.

25

1 MR. SIERKS:

2 Q Can you identify Exhibit 31 for the record?

3 A Exhibit 31 is a copy of the Part B permit application
4 which Conservation Chemical submitted to U.S. E.P.A., I
5 believe, in 1984. This would be the first Part B permit
6 application which we received from Conservation
7 Chemical.

8 Q Was there another Part B permit application that was
9 received by E.P.A.?

10 A Yes, there was one that that was received in 1985.

11 Q And why would another application have been submitted?

12 A Well, the first -- the first application was reviewed in
13 what we call a completeness check. In other words we
14 went through the application to determine whether or not
15 it was a complete permit application. We can't start
16 processing or doing a detailed technical review of a
17 permit application until the application is deemed
18 complete.

19 So, in that completeness review which was done in
20 1984, it was deemed that the application was incomplete.

21 Q And what did E.P.A. do -- did E.P.A. make that
22 determination?

23 A Yes.

24 Q It was incomplete.

25 What did the E.P.A. do after that?

1 A I believe in January of 1985, E.P.A. sent Conservation
2 Chemical what we call a Notice of Deficiency, which
3 listed the specific areas that were found incomplete in
4 the permit application.

5 Q Does the Part B permit application, Exhibit 31, contain
6 a closure plan?

7 A Yes, it does.

8 Q I ask you, did you identify in your notification to the
9 Conservation Chemical Company that you provided in
10 January of '85, did that notice indicate any
11 deficiencies in the closure plan?

12 A I believe it did, yes.

13 Q Do you recall what those areas of deficiency were?

14 A Specifically on the closure plan?

15 Q Yes.

16 A To my best recollection, they were deficiencies in that
17 it was not complete and it did not address closure for
18 all of the regulated units on the facility, and it also
19 did not provide for ground water monitoring at the
20 facility.

21 Q Can you recall any other -- approximately the number of
22 deficiencies that were indicated in the closure?

23 A If my memory serves me, I think there were probably
24 between 12 and 15 deficiencies identified. I can't
25 recall an exact number.

1 Q And do you recall what Conservation Chemical Company's
2 response was to the deficiency that you sent?

3 A Yes, Conservation Chemical submitted a second Part B
4 permit application program. I believe they submitted it
5 to us in May of 1985.

6 Q Did you require a date for submission of a revised Part
7 B application?

8 A Yes, I believe the notice of deficiency required
9 submittal of a corrected Part B permit application by a
10 certain date.

11 Q And the affidavit that you prepared in this case,
12 paragraph 8 contains a listing of the deficiencies that
13 were noted in the E.P.A. January, 1985 letter to the
14 Conservation Chemical Company as to the deficiencies in
15 the closure plan. Can you describe how that paragraph
16 was prepared, a listing of the deficiencies?

17 A That paragraph was prepared by looking at the notice of
18 deficiency letter which E.P.A. sent to Conservation
19 Chemical. In other words that's the letter of record
20 that we sent to them, and the deficiencies were quoted
21 almost directly from that letter.

22 Q So, Paragraph 8 of your affidavit is to your
23 understanding a true and correct summary of those
24 deficiencies in the closure plan in Exhibit 31?

25 MR. RUNDIO: Your Honor, I object.

1 MR. SIERKS: We could have her read all of
2 them.

3 THE COURT: What is the basis of your
4 objection?

5 MR. RUNDIO: Maybe you should read back the
6 last answer. I thought I missed something here.

7 THE COURT: He was referring to --

8 MR. RUNDIO: I'm sorry. I was trying to read
9 this sentence, not listening to -- could you read back
10 the last two questions and answers.

11 THE COURT: He asked whether the Paragraph 8
12 of her affidavit contained a complete list of the
13 problems in the closure plan submitted by the Defendant.
14 That was his question.

15 MR. RUNDIO: Okay.

16 THE COURT: Do you have an objection to that
17 question?

18 MR. RUNDIO: Right, Your Honor. I think some
19 of these deficiencies go to things other than the
20 closure plan, and I'd rather have it straightened out on
21 direct than to come back and cross-examine her.

22 My objection would be that's not what she testified
23 to previously, and the question is improper, misstates
24 the facts.

25 THE COURT: Show the objection as being

1 saying it was a statement about the material in
2 Tank 20, similarly a solvent, apparently some of
3 the solvent tanks. A copy of a letter from a
4 Mr. Williams on our stationery to Mr., or Capt. J.
5 Gorr, dated June 5, 1981. Another letter to a
6 Mr. Willie J. Cherry, fire chief, dated June 5,
7 1981, and another one from a Mr. Williams to the
8 St. Catherine's Hospital dated June 5, 1981, all
9 on our stationery.

10 Q Did Dale Chapman work for Conservation Chemical
11 or Conservation Chemical of Illinois?

12 A Conservation Chemical of Illinois.

13 Q What does that letter say about the material that
14 is stored in Tank 20?

15 A Quoting, "As requested, I have checked into the
16 contents of Tank 20 on inventory and layout sheets
17 provided to you. The sludge and solution in
18 Tank 20 was generated by neutralizing pickle
19 liquor. As indicated in the enclosed analysis for
20 this tank, the contents are essentially innocuous.

21 Q It shows, doesn't it, the solid phase of Tank 22,
22 Tank 20, I'm sorry, contains chromium at a level
23 of one point seven eight percent and a bunch of
24 other metals?

25 A Yes.

1 Q It is also chromium in the liquid phase?

2 A Yes.

3 Q Is that a total chromium analysis, do you know?

4 A I would assume that.

5 Q And the total analysis for the other materials as
6 well, right?

7 A I would assume so.

8 Q I show you what's been marked as Plaintiff's
9 Exhibit 57 and ask if you can identify that for
10 me?

11 A It is a memo with my initials, to a Mr. Oscar
12 Richards, dated 5-1-78, subject, Dick Cleaton's
13 visit, C-l-e-a-t-o-n.

14 Q Looking at Item 2 that is under there, does that
15 indicate that you asked Mr. Cleaton a question
16 about the Pie Basin?

17 A Yes.

18 Q And what was the question that you asked him?

19 A Well, as it says here, and I'll quote it, "I asked
20 if we could fill in the Pie Basin with material
21 obtained from industrial disposal called aluminum
22 dross." Should I go on?

23 Q Why don't you read the whole paragraph?

24 A "He said, yes, and also foundry saying
25 which was acceptable fill. I advised him of the

1 possibility of getting more land towards the
2 Industrial Highway if we got into a big project
3 and asked if we could fill the lowlying areas in
4 with the same material. He stated, yes. I again
5 asked if we could take some of the c-r-a-p which was
6 lying about on the property formerly leased by
7 Kools consisting of tin cans, discarded drums,
8 crushed and uncrushed pipe, et cetera, and old
9 vehicles, et cetera, if we could shove all that
10 in, cover it up with dross, and he said, 'yes.'

11 Q With respect to the Pie Basin, did you ever add
12 any materials along the lines that were suggested
13 here?

14 A No.

15 Q You never did that. Who were the Kools, who is
16 Mr. Kools?

17 A Mr. Kools is, what I understand, the owner of
18 the tract of land to the northeast of our
19 property, between our property and Industrial
20 Highway.

21 Q That is the northeast side of the property?

22 A Yes.

23 Q And there are drums out there?

24 A Yes.

25 Q Were any of those drums placed there by

1 Conservation Chemical of Illinois?

2 A Not to my knowledge.

3 Q Not to your knowledge. Is it possible some of
4 those drums --

5 A Would you like me to expand on that?

6 Q No. I'll, not to your knowledge, there were no
7 Conservation Chemical of Illinois drums placed
8 there?

9 A No.

10 MR. MCPHEE: Perhaps we could break at
11 this point. Your Honor. I can regroup and
12 shorten this up.

13 THE COURT: I have a pretrial at 1:00, so
14 we will have to break until 1:30. So, start
15 again at 1:30.

16 (Luncheon recess was taken.)

17 MR. MCPHEE:

18 Q Mr. Hjersted, I don't know if I have too much
19 more, I have just a few exhibits I'd like you to
20 identify and a couple of questions.

21 I will show you what's been marked
22 Plaintiff's Exhibit 58 and ask you if you can
23 identify that for me, please?

24 A It is a memorandum from myself to Mr. Richards
25 dated 5-1-78. The subject is Gary clean-up.

1 Q All right. Can you tell me why that memorandum
2 was generated?

3 A Without reading it, it appears to be setting up
4 priorities which is a normal task of mine.

5 Q I understand that, but, do you happen to recall
6 why you had to set up an order of priority for
7 clean-up activities at Gary?

8 A Well, let's see. Other than the general policy of
9 setting priorities for work, I don't know of any
10 other. In other words, I think your question is,
11 was I responding to a specific request by someone?
12 I don't recall that.

13 Q All right. I will show you what's been marked
14 Plaintiff's Exhibit 59 and ask if you can identify
15 that for me? That, by the way, is a copy from the
16 State administrative files and I assume you have a
17 signed copy in your records.

18 A Well, this is an unsigned -- I don't know what you
19 call the document, but it's Cause No. B-210, dated
20 March 20th, 1973, which is five years before this
21 other letter.

22 Q I understand that. But, did you sign an agreed
23 findings of fact with the State of Indiana in that
24 particular cause?

25 A There is no signature on this document.

1 Q I am asking you if you signed the document similar
2 to this document or identical to this document?

3 A Let me read it, please.

4 Q All right. I'll do that.

5 A I can't say with certitude, I know that
6 there was one action between the Company and the
7 State in which there was a settlement about this --

8 Q This document?

9 A This particular document, I couldn't say yes or
10 no. I don't recall.

11 Q The activities that are described in the May 1,
12 1978 memorandum on clean-up from the Gary
13 facility, are those related in any way to that
14 settlement?

15 A I couldn't say without examining both.

16 Q Could you take the time to do that, please?

17 A All right.

18 Q By the way, you did have an opportunity to examine
19 all these documents before? At least part of the
20 group of documents that I gave to your counsel --

21 A In a -- I don't know what is the word, I reviewed
22 them, yes.

23 Q Why don't you take time now to see if you can
24 match the two up?

25 A All right, the first item on my memorandum to

1 Mr. Richards is dedrum any known cyanide
2 liquid and ship in bulk to Kansas City by rail
3 before the end of May, and I don't see anything in
4 the unsigned document under agreed recommended
5 order dealing with that.

6 Q Can we stop right there for just a second? Let's
7 just look at the agreed recommended order. Now,
8 from your recollection, can you state whether or
9 not you entered into an agreement with the State
10 of Indiana in Cause No. B-210 which I assume was
11 an administrative proceeding or was that judicial?
12 You just testified you entered into a settlement
13 with the State of Indiana, right?

14 A Yes. I testified that at some time in the
15 seventies, that I had entered into an agreement
16 with the Board of Health. I recall that.

17 Q All right. Do you recall one of the terms of that
18 agreement was that you would immediately cease and
19 desist from placing treated or untreated chemical -
20 wastes onto the land where it can seep or
21 percolate into and pollute the ground waters of
22 the State of Indiana?

23 A I don't recall that specific terminology.

24 Q Do you recall generally that that was your
25 obligation under that agreement?

1 MR. RUNDIO: I will object. He doesn't
2 recall the agreement.

3 MR. MCPHEE: He has testified he
4 doesn't.

5 THE COURT: Objection overruled. He can
6 cross-examine him to determine his knowledge and
7 memory.

8 MR. MCPHEE: Thank you.

9 THE WITNESS:

10 A Would you repeat the question?

11 Q Do you recall generally that under this agreement
12 you were not to place any more treated or
13 untreated chemical wastes onto the land where they
14 could seep in or percolate into and pollute the
15 ground waters of the State of Indiana?

16 A You are talking about the agreement that I signed?

17 Q The agreement you had with the State of Indiana.

18 A I don't recall that.

19 Q You have no recollection of that?

20 A Not that particular detail, no.

21 Q Do you recall any agreement that you would
22 neutralize all the materials now in the basins
23 and adjacent earthen lagoons and prevent further
24 contamination of the ground waters of the State of
25 Indiana?

1 A If I may, I can tell you what I recall of that
2 agreement and save us time?

3 Q I don't know that that would save us any time.

4 A Okay.

5 Q I would like you to answer the question I ask,
6 please.

7 A The question is, did I recall agreeing to
8 neutralize material in all basins?

9 Q Right.

10 A I don't recall that specific agreement.

11 Q And you have no recollection that you agreed to
12 remove all treated or untreated waste from all the
13 basins and lagoons and ponds for disposal in a
14 manner approved by the Stream Pollution Control
15 Board?

16 A No.

17 Q What you are saying, basically you have no memory
18 of this agreement?

19 A No.

20 Q Well, let's ask you this one then. Just what do
21 you remember about your agreement with the State
22 of Indiana?

23 A That agreement dealt with a temporary holding
24 facility that we had installed to desludge or
25 remove solids from pickle liquor prior to its

1 being sent to a well in Porter County.

2 Q Where was that temporary facility located?

3 A It was directly across the road to the, from the
4 office in a northwesternly direction.

5 Q And you say desludge the material? What does that
6 mean?

7 A Well, the details of this is that we had worked
8 out an arrangement between Republic Steel and
9 Midwest Steel--

10 Q Mechanically, how did you go about desludging, is
11 that the term you use?

12 A Gravity.

13 Q Gravity into the ground?

14 A No, gravity within this vessel.

15 Q All right. And what would happen to the sludge?

16 A It settled on the bottom.

17 Q And was then placed where?

18 A It was left on the bottom.

19 Q On the bottom of the tank?

20 A On the bottom of this holding basin.

21 Q And was the basin lined?

22 A I don't recall the construction of the basin, so I
23 would --

24 Q Was it concrete?

25 A I would say -- no, it was some industrial residue

1 overruled.

2 MR. SIERKS:

3 Q Just to clarify the record, are the items listed in
4 Paragraph 8 of your affidavit deficiencies in the
5 closure plan or rather in the Part B application?

6 A It's a list of deficiencies on the over -- on the whole
7 Part B permit application, some of which address the
8 closure plan specifically.

9 However, the deficiencies are merely items that are
10 missing or not included. It's not any kind of technical
11 review of those items.

12 Q I'd like to just have you turn to a couple of the pages
13 in Exhibit 31. First one, if you can find it, is page
14 C-38?

15 A Okay. I've found it.

16 Q The last two paragraphs, can you just for the record
17 read what those paragraphs state?

18 A The second to the last paragraph on page C-38 states,
19 "Plant has surface impoundment. This surface
20 impoundment has solids and liquids if it. Liquids has
21 P.H. of 1.8. Specific gravity of 1.0. Solids from the
22 surface impoundment has P.H. of 4.8."

23 Then the last paragraph states, "Waste pile has
24 only solids in it. P.H. of these solids is 5.8.

25 "Oil separator has also liquids and solids in it.

1 Liquid has P.H. of 6.8 and specific gravity of 1.0.
2 Solids' P.H. is 5.4.

3 "Process sump before neutralization has P.H. of
4 1.8. and specific gravity of 1.0."

5 Q Okay. Can you turn to page D-66.

6 A Okay.

7 Q Again can you read the third paragraph, the first
8 sentence.

9 A It says, "Our plan is to dig out the waste pile about
10 one and a half to two feet deep, remove all the dirt,
11 analyze the material, if it's found hazardous, dispose
12 in approved land-fill, otherwise use the dirt back to
13 fill the pile."

14 Q And then in the fifth paragraph, would you read the
15 first sentence?

16 A "Facility has one surface impoundment which is about 2
17 feet by 320 feet by 294 feet. We have also one oil
18 separator which is about 12 feet by 50 feet by 20 feet."

19 Q Can you turn to page D-71 and D-72? Just describe what
20 information is contained on those two pages for the
21 record?

22 A For the record page D-71 consists of a hand-drawn, I
23 guess, map or plat of a portion of the facility. It's
24 titled "Waste Pile," and under that in parentheses it
25 says pie-shaped basin.

1 The drawing shows the location of the waste pile
2 relative to two railroad tracks and shows it to be 300
3 feet by 34 feet -- excuse me, 134 feet by 282 feet.

4 It does not provide an orientation as to the
5 direction of the drawing. There's no sign indicating
6 where north is.

7 And then in the center of the sort of triangular
8 area that I am assuming they are identifying as the
9 waste pile, it indicates it's 12,596 square feet.

10 Q Can you briefly describe what is on page D-72?

11 A D-72 is titled "Surface Impoundment." Again there's no
12 orientation as to which way is north on the map. It
13 contains a five-sided drawing of an area with some hatch
14 marks going through part of it. Inside that five-sided
15 box is a circle that's labeled T-19. And there are --
16 is a smaller circle nearby it that says F-1. And then
17 another small box nearby that's labeled R-1.

18 And the dimensions of this five-sided drawing are
19 320 feet across the top, 18 feet at the bottom left, 190
20 feet and 60 feet along the bottom edge and then 294 feet
21 along the side going up at the right side of the page.

22 Q Can you refer now to Section I, which I believe is the
23 closure plan?

24 A Okay.

25 Q Can you turn to page I-3 in that. Just read for the

1 record the fourth whole sentence that begins, "There is
2 a waste pile." Read those first two sentences in that
3 paragraph?

4 A Paragraph 4?

5 Q Yes, it begins, "There is a waste pile."

6 A "There is a waste pile (pie-shaped) basin at the
7 facility which has been previously used as a cooling
8 tower," excuse me, "cooling water pond and collection
9 for plant clean up. It will be stabilized either by
10 removing the residue contained therein and back-filling
11 or by mixing the residue with fly ash to create a firm
12 mass. If the residue is removed it will be disposed of
13 at an off-site facility."

14 Q Could you also read the section or the next paragraph
15 referring to the surface impoundment

16 A "There is a surface impoundment also at the facility
17 which has been previously used as a dike for tank 19.
18 Presently it is used as an evaporation pond for rain
19 water and pumped seal water from the pickle liquor
20 processing area. Surface impoundment has solids in it.
21 Water on top is neutral and does not contain any
22 hazardous constituents. It will be disposed at off-site
23 facility."

24 Q Is this closure plan in the section I, the plan that was
25 reviewed by E.P.A. and is the basis for that paragraph --

1 or included in the deficiencies noted in Paragraph 8 of
2 your affidavit?

3 A Yes.

4 Q And you indicated C.C.C.I. submitted a revised closure
5 plan?

6 MR. SIERKS: I'm sorry, let me move on. At
7 this time if you have no objection, I'd like to move for
8 admission of -- okay. Sorry. One more question on
9 that.

10 Q Can you turn to page I-43, Part B.

11 A Okay.

12 Q And can you describe what page I-43 is?

13 A I-43 is a transmittal letter which was sent to U.S.
14 E.P.A. covering the Part B permit application which we
15 have just been discussing labeled Exhibit 31. And it
16 was signed by Mr. Hjersted, and it says, "Here is the
17 Part B permit application."

18 It says how many copies they are sending and it
19 includes a certification that says under penalty of law
20 that Mr. Hjersted understands what he's signing, and
21 he's personally examined it, and he believes the
22 information is true, accurate and complete.

23 Q Based on the information in that permit application,
24 does E.P.A. consider any of those waste pile or surface
25 impoundments regulated under the R.C.R.A. program?

1 A Could you rephrase that question, please.

2 Q Based on the information --

3 MR. RUNDIO: Your Honor, I'll object if she
4 can't answer it as phrased. I guess she has to answer
5 it, "I don't know."

6 A All right. Could you repeat the question then please.

7 THE COURT: You may rephrase it.

8 MR. SIERKS:

9 Q I'll rephrase it. What information in that permit
10 application in your review would indicate whether there
11 are any land disposal units at the facility?

12 A Basing it solely on what is in this permit application,
13 I would say E.P.A. would be led to believe there were at
14 least two land disposal units at the facility.

15 Q Can you describe your understanding of what a land
16 disposal unit is?

17 A A land disposal unit is a unit which could either be a
18 surface impoundment, a waste pile, a land-fill, an
19 underground injection well or -- did I mention waste
20 pile? Yes.

21 Q Yes. What is your understanding of a surface
22 impoundment as used in the R.C.R.A. program?

23 A My understanding is based on the definition of the
24 surface impoundment contained in the regulations, and
25 that's either a naturally occurring depression or a

1 constructed depression that may have also artificially
2 constructed sides that's used to hold freely moving
3 liquid wastes or wastes which contain enough liquid so
4 they would flow.

5 THE COURT: Would this be a convenient time to
6 break for lunch?

7 MR. SIERKS: Yes, Your Honor. Before we
8 break, I'd like to just move for the admission of, I
9 guess it would be, Exhibits 28, 29, 30 and 31.

10 THE COURT: Any objection?

11 MR. RUNDIO: No, Your Honor.

12 THE COURT: For the record show Plaintiff's
13 Exhibit 28, 29, 30 and 31 as being admitted.

14 I have a pre-trial conference at 1:00. Hopefully
15 it will be short.

16 I'll have to make it short, I guess, so why don't
17 we plan on starting at 1:30.

18 (Whereupon, documents previously marked
19 Plaintiff's Exhibits 28, 29, 30 and 31
 were admitted in evidence.)

20 THE CLERK: All rise.

21 (Lunch recess.)

22 (The trial was resumed and the following
23 proceedings were had, reported as follows:)

24 THE CLERK: All rise.

25 (Witness resumes stand.)

1 THE COURT: Mr. Sierks, back to you.

2 MR. SIERKS: What was the last Exhibit that
3 was marked?

4 MR. RUNDIO: 31, I think.

5 CONTINUED DIRECT EXAMINATION BY:

6 MR. SIERKS:

7 Q I'd like to hand you what's been marked as Plaintiff's
8 Exhibit 32 and before you identify that, I would like to
9 note for the record that I've added certain yellow tags
10 which can be removed which just indicate the pages we
11 will be referring to will hopefully speed up finding the
12 pages a little bit, but that is not on the copy I
13 provided Mr. Rundio. Other than the yellow stickers
14 that have been added, can you identify Exhibit 32?

15 A Exhibit 32 is the second Part B permit application or
16 revised Part B permit application which Conservation
17 Chemical stated to U.S. E.P.A. under a cover letter
18 dated May 8th, 1985.

19 Q Does that Exhibit indicate when it was received by
20 E.P.A.?

21 A It was date stamped two different times, once on May
22 10th, 1985 and once on May 13th, 1985.

23 Q And is this a copy of the application from the official
24 E.P.A. files?

25 A Yes, it is.

1 Q Okay. Would you turn to page A-7 which I didn't put a
2 yellow sticker on. It's headed, "Discussions regarding
3 changes in Part A application."

4 A Okay. I found the page.

5 MR. RUNDIO: A-7?

6 MR. SIERKS: Right.

7 Q Paragraph 7, at the bottom of that page indicates that
8 they have replaced process code S-O-4 with process code
9 S-O-3?

10 A Yes, it does.

11 Q Are you familiar with what that sentence involves or
12 what is meant by that sentence?

13 A I would assume that their meaning here is that they've
14 changed on this new Part A which is submitted as part of
15 the Part B permit application, they've substituted the
16 waste code -- or the process code S-O-4 which is storage
17 in surface impoundments to S-O-3 which is storage in a
18 waste pile.

19 Q Does that indicate why that process code change was
20 made?

21 A They said that they did so because they did not wish to
22 include that process code as part of their final permit.

23 Q And in your responsibilities with E.P.A., do you have an
24 opinion as to whether that is a proper procedure for
25 realizing process codes under any application?

1 A I don't know that it's necessarily the proper procedure,
2 I think if it's their intention to not seek a permit for
3 that part of their facility, then they should so note,
4 and that particular part of the facility in question
5 would have to be closed in accordance with R.C.R.A.
6 standards before the permit is issued.

7 Q And what area of the facility are we referring to if you
8 can tell from the Paragraph 7?

9 A I would assume that that what they are talking about,
10 S-O-4, based on previous knowledge would at least at
11 minimum be the impoundment -- surface impoundment
12 located in the very southern-most corner of the
13 facility.

14 Q The pie-shaped basin?

15 A That's what C.C.I. refers to as the the pie-shaped
16 basin.

17 Q Okay. Farther down on that paragraph there is a
18 sentence that reads, "We have since learned that under
19 the definition shown in 40 C.F.R. 260.10 this pie-shaped
20 basin would be defined as a waste pile. As a
21 consequence we are now listing as processed code on the
22 revised Part A." In your experience does that indicate
23 that they are really changing the label of that land
24 disposal unit at the facility?

25 A It appears that's what they are attempting to do.

1 Q What significance would that have under R.C.R.A.?

2 A Well, the primary significance of that would be is that
3 a waste pile isn't required to have ground water
4 monitoring whereas surface impoundments are.

5 In other words even though a waste pile is a land
6 disposal unit, there is no requirement for ground water
7 monitoring for facilities that only have waste piles.

8 Q And you're -- is one of your responsibilities as a
9 R.C.R.A. program person to make a determination in
10 reviewing an application whether a facility has a waste
11 pile or a surface impoundment, whether -- do you review
12 whether a designation made on an application is proper?

13 A Are you asking specifically in the case of reviewing a
14 permit application?

15 Q In the context of this site rather than generally.

16 A Okay. Well, first of all, I myself would not
17 necessarily review this document in the context of it
18 being a permit application.

19 I would rather be looking at it from the viewpoint
20 of someone involved in enforcement actions with the
21 facility. I'm not a permit writer. It's not part of my
22 duties.

23 Q Are part of your duties as an enforcement officer to
24 determine whether a facility has surface impoundments or
25 waste piles at the facility if that's at issue in the

1 case?

2 A Yes, if that's at issue in the case, and I also would
3 consult with any permit writer that would have knowledge
4 of the facility to help me in my decision.

5 Q Okay. Turning to the next page, page A-8, just can you
6 indicate in the record in numbers 8 and 9 -- paragraphs
7 8 and 9 on that page, do those indicate whether the
8 facility actually has more design capacity than was
9 shown on the original Part A?

10 A Yes, here they are indicating that they are changing the
11 design capacity for treatment in tanks from 25,000
12 gallons per day to 52,000 gallons per day which is
13 slightly more than doubling.

14 Q And what about Paragraph 9?

15 A In Paragraph 9, they are talking about the estimated
16 annual quantity of the cyanide bearing plating wastes,
17 and in the original Part A, it had said 450 tons. And
18 they said they wanted to revise their Part A application
19 to show an estimated annual quantity of 750 tons, which
20 is an increase of 300 tons.

21 Q Turning to page A-9, paragraph number 14, does that
22 indicate whether a new listed hazardous waste has been
23 added to their Part A application?

24 A Yes, it says that they wish to add the waste code
25 D-O-O-3 which, if my memory serves me correctly, is the

1 listing for the characteristic of reactivity. I would
2 want to look at the regulations to be certain that
3 that's the correct number.

4 Q And why do they indicate they are adding that to their
5 Part A application?

6 A They indicate that they had left it off the original
7 Part A and that it's applicable to the silica
8 tetrachloride which they are storing.

9 Q Would you turn to page B-1 which should have a yellow
10 sticker on it.

11 A Now, shall I remove these yellow stickers as I discuss
12 each page?

13 Q Yes.

14 A All right.

15 Q In the fifth paragraph that begins, "The plant produces
16 finished products."

17 A Uh-huh.

18 Q Would you just read that paragraph into the record and
19 the numbered waste listed below that?

20 A All right. It states, "The plant produces finished
21 products," paren, "(iron salts)" close paren, "from the
22 pickle liquor and in this process does not produce any
23 hazardous waste. We do not produce any waste which is
24 hazardous at the present time.

25 "However from prior years' operation, we do have

1 hazardous waste which is stored at the facility. These
2 wastes consist of Number 1, Number F-0-14 and F-0-15,
3 cyanide waste, F-0-1 and F-0-2, spent halogenated
4 solvents; D-0-0-2, silica tetrachloride; and D-0-0-3,
5 plating solution containing H.N.O.3 as acid, copper and
6 nickel.

7 "5 is tar residues, paint, sludges, soil clean-up
8 residue and miscellaneous chemicals stored in containers
9 at the facility."

10 Q Turning to page C-26. I'm also referring to page C-27
11 in this question. Can you read the fourth paragraph on
12 page C-26 which begins, "At present."

13 A It says, "At present all containers are stored on
14 pallets as indicated on the plot plan. A summary of the
15 drums and their contents follow on page C-27."

16 Q And can you describe what the page C-27 is a list of
17 materials in containers?

18 A Yes. It's a table and it's titled "List of Materials in
19 Containers." In the left-hand column it shows the
20 number of drums in each category, then the next column
21 is their contents. Next category is the E.P.A.
22 hazardous waste code, and then the next column gives
23 some information on specific gravity solubility in
24 water, Cyanide in parts per million. That column
25 incidentally is completely blank, and then the last

1 column is for P.H. values.

2 Q Okay. What are the P.H. values indicated for the two
3 wastes near the bottom of that chart?

4 A Okay. One is for four drums of acid waste, and the P.H.
5 on that is 1.5.

6 Then the other would be for eight drums of chrome
7 liquid and sludge, with a P.H. value of also 1.5.

8 Q Okay. I guess getting back to page C-26 could you read
9 for the record, I believe, the first paragraph contains
10 a sentence indicating how many drums are referred to in
11 this chart?

12 A "Prior to 1980 the facility received waste material in
13 containers as a named part of their business.

14 "Since 1980 no waste material has been received in
15 containers nor will the facility receive waste material
16 in containers in the future. The inventory of
17 containers has been reduced to 121 drums. Not all drums
18 contain hazardous waste."

19 Q Can you turn to page C-33? And can you read the first
20 two paragraphs of that for the record?

21 A The heading at the top of this page is "Waste Analysis
22 Plan," and it's for tanks containing cyanide.

23 First two paragraphs read as follow: "Prior to
24 1980 the facility received cyanide waste to be stored in
25 steel storage tanks as a normal part of their business.

1 Since 1980 no cyanide material has been received nor
2 will the facility receive cyanide material in any form
3 in the future. The present inventory is approximately
4 150,000 gallons. A summary chart for the storage tanks
5 with the analysis follows on page C-35."

6 Second paragraph.

7 "The facility is preparing a partial closure plan
8 to be submitted to the Indiana State Board of Health for
9 their approval to discontinue the storage and treatment
10 of cyanide waste. This plan will be submitted August
11 1st, 1985."

12 Q Could you turn to page C-45?

13 A Okay.

14 Q And would you read the second paragraph and first
15 describe what that paragraph is about, which waste it
16 addresses?

17 A Okay. This page is titled, "Tanks Silica Tetrachloride,
18 D-0-3."

19 The second paragraph reads: "The facility is
20 preparing a partial closure plan to be submitted to the
21 Indiana State Board of Health for their approval to
22 discontinue the storage and treatment of this type of
23 waste. This plan will be submitted by August 1st,
24 1985."

25 Q Can you refer to page C-48?

1 A All right.

2 Q Can you read the first and -- actually the first
3 paragraph on that page.

4 A This page is entitled "Waste Analysis Plan. Tank
5 Chlorinated Solvents and Solvents."

6 "The facility has approximately 79,680 gallons of
7 chlorinated solvents in storage from activities prior to
8 1980. Since 1980 no waste material of this type has
9 been received at the facility nor will any be accepted
10 in the future."

11 Q Okay. Turn to page C-51? Can you read the first
12 paragraph on that page under the heading for
13 "Neutralized Acid Sludge"?

14 A Okay.

15 Q At the very top.

16 A This page is titled, "Waste Analysis Plan, Tanks,
17 Neutralized Acids, Sludge." You want the first
18 paragraph?

19 Q First paragraph.

20 A "The facility has approximately 246,000 gallons in
21 storage from activities prior to 1980. Since 1980 no
22 waste material of this type has been received at the
23 facility, nor will any be accepted in the future."

24 Q And for the heading under "Dilute Nitric Acid," further
25 down on that page, can you read the first paragraph

1 there into the record?

2 A Okay. Under "Tanks Dilute Nitric Acid."

3 "The facility has approximately 3,000 gallons in
4 storage," paren "(T-17)" close paren "from activities
5 prior to 1980. Since 1980 no waste material of this
6 type has been received at the facility nor will any be
7 accepted in the future."

8 Q Now, for those wastes in tanks that you've just referred
9 to, the last several pages, do they all indicate that
10 waste is stored at the site at the present time?

11 A Yes.

12 Q And would that subject the facility to R.C.R.A. closure
13 requirements for that waste?

14 A If the facility were closing, yes, they would have to
15 meet the closure requirements for all those wastes in
16 question.

17 Q Can you turn to page D-6.

18 A Okay.

19 Q Just identify it for the record what that page is?

20 A D-6 is a page -- it covers about two-thirds of the page
21 and it's titled "List of Tanks," and in the left-hand
22 column it provides the identification for each tank, and
23 in the right-hand column it indicates the contents of
24 each tank.

25 Q Can you turn to page D-72.

- 1 A All right.
- 2 Q And the top first sentence of that page, can you
- 3 describe again does that indicate the storage of
- 4 hazardous waste at the site?
- 5 A Yes. The page is titled, "Tank Management Practices,"
- 6 and it gives a listing of waste stored in tanks.
- 7 Q Can you turn to page D-77.
- 8 A Okay.
- 9 Q Would you just read the first paragraph into the record?
- 10 A This page is titled, "Waste Piles," and waste piles is
- 11 in quotation marks. "The facility does not have a waste
- 12 pile as defined by 40 C.F.R. 260.10. There is a
- 13 pie-shaped area that has been referred to as a waste
- 14 pile. Samples have been taken from this area and
- 15 analyzed. The results indicate there are no hazardous
- 16 wastes present. The facility has not used this area to
- 17 store or treat waste nor does it plan to in the future."
- 18 Q The next sentence on that page indicates that the
- 19 results that establish that it's not hazardous are
- 20 contained on the next page which would be page D-78. In
- 21 looking at that page, can you identify how many samples
- 22 were taken of the waste pile?
- 23 A This does not indicate how many samples were taken.
- 24 It's a listing. Excuse me.
- 25 It's a listing of the parameters which were tested.

1 Q Would that -- in order to make a determination and
2 permit review that that facility was not covered as a
3 waste pile or surface impoundment, would you need more
4 information than what's supplied in the Part B based on
5 your knowledge of the site?

6 A Based on my knowledge of the site, if this is the only
7 information that's being provided as a demonstration
8 that there are not characteristic hazardous wastes in
9 this impoundment, I would say this is not an adequate
10 demonstration.

11 Q Turning to page D-79, can you just identify what is on
12 that page for the record?

13 A D-79 is a hand-drawn sketch or plat, and it looks like
14 it's a Xerox copy of a drawing that appeared in the
15 first Part B permit application. It's titled, "Waste
16 Pile," and underneath it in parentheses it's titled
17 "Pie-shaped basin," and then it shows railroad tracks
18 going from like the middle of the page up to the
19 right-hand corner. And then it has a sort of triangular
20 area. It gives the dimensions across the top of 300
21 feet, along the bottom 282 feet, along the side 134
22 feet. And then the total square feet is the written
23 inside this triangle. 12,596 square feet, and there is
24 no orientation or indication of what is north on this
25 page.

1 Q Okay. Turning to page D-80 would you read the top
2 paragraph for the record there?

3 A The D-80 is titled, "Surface Impoundments." It reads:
4 "The facility has a surface impoundment estimated at 4
5 inches by 320 feet by 294 feet.

6 "See sketch that follows the analysis in this
7 section. The results of the analysis of the material in
8 the surface impoundment follow this page. The facility
9 is preparing a partial closure plan to be submitted to
10 the Indiana State Board of Health to eliminate this
11 surface impoundment. It is planned to be submitted by
12 August 1st, 1985. Basically the plan is to convert an
13 abandoned oil separator into an evaporation pond to
14 handle any excess water generated by the plant."

15 Q Turning to page D-81 which again was indicated in that
16 Part B as being results of analyses of the surface
17 impoundment, does this indicate how many samples were
18 taken of their location?

19 A No, it does not.

20 Q And what is -- is the same for page D-82 which indicates
21 the results of liquids analyses from the impoundment?

22 A It does not state how many samples were taken or their
23 locations. Really the only identifying information at
24 all other than the parameters is the date it was taken
25 which is July 7th, 1981.

1 Q And turning to page D-83, is that a diagram of the
2 surface impoundment?

3 A This is a drawing that looks just like the drawing that
4 was in the first Part B permit application that was
5 titled, "Surface Impoundment." It's five-sided shape
6 drawn around a circle with T-19 written in it.

7 Do you want me to give the dimensions?

8 Q No. That's all right.

9 A It appears to be the same drawing.

10 Q And can you turn to Section I, which I believe is the
11 closure plan in that application. Did you review that
12 closure plan?

13 A I did a review of this closure plan at the request of
14 Mr. Rundio and Mr. Hjersted.

15 Q You earlier explained how a closure plan is reviewed as
16 part of the overall permit process. Was your review
17 part of that overall permit process review?

18 A No, it was not.

19 Q How would this, if you know, application normally have
20 been reviewed, closure plan normally have been reviewed?

21 A Well, normally it would have, first, undergone the
22 completeness check review which is a general, as I said
23 before, a general evaluation of the total document to
24 determine whether or not it could be deemed complete.
25 Assuming that the permit application were deemed

1 complete, the next step would be to perform a detailed
2 technical evaluation of the permit application itself.

3 And in that detailed technical review, actual
4 technical deficiencies within the plan would have been
5 identified.

6 Q And do you know where in the process that the review was
7 in 1985 after it was submitted, I guess you said in May
8 of 1985?

9 A I believe that as of now the state has completed or has
10 done a completeness check, and the check list is in
11 draft form, but it has not been finalized by the state,
12 and it has not been transmitted officially either to the
13 facility or to E.P.A.'s permit writers.

14 Q And was it the state's responsibility to review this
15 permit application when it was submitted in May of '85?

16 A It was our responsibility to do the review of it,
17 however as part of our work agreement with the state,
18 the state was assigned to do the completeness review of
19 the permit application.

20 Q Is this for all permits in Indiana or just for this
21 site?

22 A It's for many permits in Indiana, not just this one, not
23 every single one.

24 Q And you indicated that the state was partially through
25 the completeness check --

1 A I think --

2 Q -- to your knowledge or has completed the completeness
3 check?

4 A Well, I think that essentially the completeness check
5 was done, however the check list was not reviewed for
6 like a quality check by the reviewer or supervisor, and
7 it was not in a form where it would be normally
8 transmitted either to the facility or to U.S. E.P.A.

9 Q Do you know if there were any events that occurred while
10 the state was reviewing the plan which would have
11 affected its review?

12 A The plan or the permit application?

13 Q I mean the permit application, I'm sorry.

14 A Well, probably -- there were a couple of things that
15 occurred, one of which, was something programmatic. In
16 other words that effected the implementation of the
17 entire program and that was getting involved in the
18 facility management planning process. That caused some
19 delays in the Part B permit application processing.
20 However, I don't think that that was a major impact on
21 the review of this application. I think the biggest
22 thing that impacted the review was on November 8th, 1985
23 the facility lost its interim status.

24 Q Could you describe what you mean by that in more detail?

25 A In the -- H.S.W.A. Amendments that were passed in 1985,

1 hazardous and solid waste amendments of 1984

2 Q Those amendments to R.C.R.A.?

3 A Yes, they were amendments to R.C.R.A. They were signed
4 on November 8th, 1984, and as a requirement of those
5 amendments, all land disposal facilities were required
6 to by November 8th, 1985 do a couple of things. One,
7 was if they had not done so already, submit their Part B
8 permit application and the other was to certify
9 compliance with all applicable ground water monitoring
10 and financial responsibility requirements.

11 If either one of those things or any of those
12 things were not done, then the facility would lose
13 interim status.

14 Although Conservation Chemical had already
15 submitted a Part B permit application, it did not
16 certify compliance with ground water monitoring
17 requirements or financial assurance requirements.

18 Q By November 8th?

19 A By November 8th, 1980 or since.

20 Q 1985.

21 A 1985, excuse me.

22 Q Okay. And is it correct that in the permit application
23 on file, the application indicates there are land
24 disposal units at the facility?

25 A Yes.

1 Q Can you describe then what the impact upon E.P.A., what
2 regulatory requirements go into effect when a facility
3 loses interim status?

4 A Well, facilities that lose interim status were required
5 to submit a closure plan for those units which lost
6 interim status 15 days after November 8th, so that would
7 have been November 23rd, 1985.

8 Q Does this requirement to submit a closure plan differ
9 from the requirement to have a closure plan in the Part
10 B permit application?

11 A I would say so, yes.

12 Q Are you familiar with the purpose of that or why another
13 closure plan has to be submitted?

14 A Well, I don't know that specifically the requirement is
15 to submit another closure plan. I think the requirement
16 is to notify, in this case it would have been the State
17 of Indiana since they are responsible for reviewing and
18 approving closure plans.

19 It would have been the facility's responsibility to
20 notify the State of Indiana that they were going to go
21 through closure, and then either submit to them the
22 closure plan which they propose to use or else indicate
23 as they could have in this case if they had chosen to,
24 to submit -- tell the state to review the closure plan
25 that had been submitted as part of the permit

1 application.

2 Q In your review of the official file on Conservation
3 Chemical is there any notification from Conservation
4 Chemical submitted to the State of Indiana that it was
5 closing or had lost interim status?

6 A In my review of the file I found no such notification.
7 In addition I telephoned the State of Indiana, I think
8 it was the last week of February, to verify with their
9 permit people whether or not such a notification had
10 been provided, and they said as of that date it had not.

11 Q Let me ask you one more question about the revised Part
12 B application we have been talking about. Is there a
13 similar certification submitted by the applicant, the
14 owner-operator of the facility that the application was
15 true and accurate as you testified with the other
16 Exhibit?

17 A I believe so.

18 Q Off the record for a minute. I believe it's in one of
19 the Exhibits.

20 A Pardon me.

21 Q I think that certification form is near the front.

22 A Yeah, I think it is. Yes, there is such a
23 certification.

24 Q Who was that signed by?

25 A It's signed by N.B. Hjersted, President, and it was

1 signed on May 6th, 1985.

2 Q And that certification again indicates their belief that
3 the information in this application is true and correct
4 to their best of their knowledge and belief?

5 A Yes, it does. It states that -- it states, "I certify
6 under penalty of law that this document and all
7 attachments were prepared under my direction or
8 supervision in accordance with the system designed to
9 assure that qualified personnel properly gather and
10 evaluate the information submitted.

11 "Based on my inquiry of the person or persons who
12 manage the system or those persons directly responsible
13 for gathering the information, the information submitted
14 is to be the best of my knowledge and belief, true,
15 accurate and complete. I'm aware that there are
16 significant penalties for submitting false information
17 including the possibility of fine and imprisonment for
18 knowing violations."

19 Q Did you review the closure plan that was contained in
20 Exhibit 32?

21 A Yes, I did.

22 Q I'd like to show you a copy of what's been marked as
23 Plaintiff's Exhibit 33, and ask you if you can identify
24 that?

25 A Plaintiff's Exhibit 33 is a copy of a letter which I

1 prepared on behalf of Basil G. Constantello who's the
2 director of the waste management division.

3 Q When did you prepare this letter?

4 A When or why?

5 Q Why.

6 A Well, I prepared this letter which discusses the closure
7 plan contained in the most recent Part B permit
8 application based on a request from Mr. Rundio and Mr.
9 Hjersted that U.S. E.P.A. provide comments on the
10 closure plan in the Part B permit application before
11 they start writing another closure plan for the
12 facility.

13 Q Did you indicate to them before you prepared this that
14 that closure plan in the Part B permit application,
15 Exhibit 32 was deficient?

16 A Yes, I did.

17 Q And are those deficiencies listed in this letter?

18 A The deficiencies are outlined in fairly broad
19 generalized statements. I think what I tried to do in
20 my review is point out some of the areas that were
21 especially either deficient or in needing additional
22 information. Also, I tried to address areas at the
23 facility that were not included in the closure plan.

24 Q Is this a full technical review that you performed on
25 the closure plan?

1 A No, it is not. I did this review and made these
2 comments at Mr. Rundio's request simply to provide them
3 with information on what some of our biggest concerns
4 were. I felt that since they were telling us they were
5 going to hire a different consultant to write a
6 completely different closure plan, there was not much
7 point in doing a complete and detailed technical
8 evaluation of their closure plan.

9 Q Are these comments intended to be exhaustive?

10 A No, they are not.

11 Q Could you without going through all ten of them briefly
12 summarize them, the more significant deficiencies or
13 areas that the plan should address?

14 A The larger deficiencies were concerning the proposed
15 sampling and analysis. I think the sampling and
16 analysis that was included in the plan would really not
17 be useful in making determinations as to the extent of
18 contamination at the site and also in determining just
19 how much contaminated material would have to be removed.

20 It questioned some of the proposals for
21 decontamination of storage tanks on the site. I felt
22 that some of the methods proposed might not adequately
23 decontaminate the tanks. And I also questioned whether
24 some of the procedures they proposed for personnel
25 conducting the clean up, I questioned whether they would

1 provide adequate protection in light of some of the
2 materials being handled.

3 One thing of note was that the plan stated that the
4 container storage area would be washed down with water.
5 Based on my knowledge of the facility and this was
6 confirmed at a recent site visit that the container
7 storage area consists of containers sitting on bare
8 soil. I didn't see that washing that area with water
9 would really provide de-contamination.

10 I think that more detailed identification of the
11 waste on site should be done. There were some areas of
12 the plan that were very vague as to what exactly the
13 wastes were that were being either decontaminated or
14 removed or requiring closure.

15 The plan noted that much of what -- or some of the
16 waste on site would either be further treated at the
17 site prior to disposal or else would be resold as
18 commercial product. And while that's an acceptable
19 alternative, I think that the plan would have to propose
20 a means of dealing with the worst case situation. In
21 other words, nothing further would be done at the site
22 other than remove the waste. So, that needed to be
23 addressed.

24 It doesn't address all of the regulated units at
25 the site. It only -- well, it addressed, but not really

1 addressed, the surface impoundment in the southern-most
2 corner of the facility which the -- which Conservation
3 Chemical calls the pie basin, and it partially addressed
4 what they call -- the surface impoundment that they call
5 the T-19 basin.

6 I don't think that it addressed them adequately,
7 and it does not address the area around tank 20 which I
8 think meets the definition of a surface impoundment, and
9 it does not address the area to the west of the
10 facility, which they call the off-site basin or which
11 people at this hearing have been calling the off-site
12 basin, that I believe meets the definition of a surface
13 impoundment.

14 Q Are those areas that you were talking about described on
15 Exhibit 5?

16 A I think I was looking at Exhibit 1 when I made those
17 remarks.

18 Q We'll get back to the land disposal units in a little
19 more detail.

20 A Okay.

21 Q I'd like to ask you a few questions about your actual
22 observations at the site?

23 A Okay. Mr. Sierks, if I might make one last comment
24 about --

25 MR. RUNDIO: Your Honor, I object. There is

1 no question pending.

2 THE COURT: There's no question pending.

3 MR. SIERKS:

4 Q Did you have any more comments about the closure plan?
5 I'm sorry if I cut you off.

6 A I had one last comment about the closure plan in that
7 the level of effort outlined in the plan for doing the
8 closure in terms of man hours for doing the clean up,
9 and the cost for the actual disposal of the materials,
10 and for the sampling and analysis required I think were
11 quite low, quite conservative. And I think in light of
12 some of the comments made on the closure plan those
13 amounts would have to adjusted upward.

14 Q Do you recall what the estimated closure cost was in the
15 plan that you reviewed?

16 A I don't recall right offhand. I would have to refer to
17 the plan for the exact number.

18 Q That's all right.

19 Okay. Turning now to your actual observations of
20 the site, do you recall -- have you ever visited the
21 Gary site?

22 A Yes, I have. I visited the site on three occasions.

23 Q When was the first time you visited the site?

24 A The first time I visited the site I believe was on June
25 22, 1983.

1 Q Did you take any notes during your site visit at that
2 time?

3 A I completed an interim status standards and inspection
4 report.

5 Q I'd like to hand you a copy of what's marked as
6 Plaintiff's Exhibit 34.

7 A Okay.

8 Q Ask if you can identify that?

9 A This is a copy of the inspection report which I
10 completed at the time of the inspection.

11 Q When did you make your notations on this form as
12 compared to the time you did the inspection? Was it
13 during or --

14 A I think that I made the majority of the comments during
15 the inspection, and that I may have made additional
16 annotations when I returned to the office. Specifically
17 on the last two pages of the inspection report in the
18 area marked "Remarks," and on the site sketch, I believe
19 I did those two pages after I returned to the office.

20 Q Would you in paging through this Exhibit 35, just point
21 out some of the more significant observations that are
22 noted here which are a reflection of your inspection?

23 A Okay. One of them was that the most recent analysis for
24 the facility was 1981, and that that was not an
25 up-to-date analysis. It was two years old.

1 Q When you refer to analysis, what do you mean?

2 A One of the requirements of R.C.R.A. is that the owner or
3 operator obtain detail chemical and physical analyses of
4 their waste and that they be kept current.

5 Due to the nature of the facility, I would think
6 that the waste that they generated on site should have
7 been sampled or analyzed relatively frequently, and also
8 there was not analysis of all the waste on site.

9 They did have a waste analysis plan, but it had not
10 been fully implemented, and I made a comment about that
11 at the end of the report.

12 The security at the facility was lacking. There
13 was a fence around the facility but it was not entirely
14 secure. It consisted of stakes driven into the ground
15 with wire fencing on it, and someplaces it had fallen
16 over. And in one instance I remember specifically, I
17 think nudging the fence would be about the right word to
18 use, with my foot and it fell over.

19 And Mr. Poizel, the plant manager was working was
20 with me at the time and he expressed some distress that
21 I had knocked his fence over.

22 Also the gate was open at the time that I arrived
23 at that inspection and at each subsequent visit. So
24 there was not controlled entry to the facility.

25 Although there was a record that inspections were

1 A I believe so.

2 Q Did you understand this was the closure plan for
3 compliance with the Resource Conservation Recovery
4 Act?

5 A My recollection is limited to the fact that it was
6 simply our response to the requirements for a
7 closure plan.

8 Q A promise for a closure plan?

9 A Our response to the requirements.

10 Q I see.

11 A Of the EPA for a closure plan.

12 Q Was that a response to an administrative
13 order issued by the agency, do you know?

14 A I don't recall.

15 Q And what was the amount that was shown for --
16 well, excuse me, let's go to the last page of
17 that. There is an estimated cost that is stated
18 there, is that for cyanide wastes only?

19 A That is what it states.

20 Q Was there an estimated cost for the entire closure
21 of the facilities that was part of that?

22 A That's inferred because, in reading this quickly,
23 I believe Mr. Chapman indicated that he thought
24 that we could sell the methylene chloride
25 hydrocarbon mixtures that we had on hand. We

1 would have to treat the cyanide waste. At that
2 time he's got a statement there was no cost
3 anticipated for closure for non cyanide waste,
4 which, in fact, I don't believe he characterized
5 the material in Tank 22 as a waste even. We
6 consider that as an asset, marketable asset.

7 Q The material in Tank 22 you consider as an asset?

8 A Right. At one time we were offered 43 cents a
9 gallon, and that would have been almost
10 \$400,000.00.

11 Q Showing you what's been marked as Plaintiff's
12 Exhibit 56, I will ask you if you can identify
13 that for me?

14 A This is a letter from Mr. Chapman to Mr. James
15 Pankanin, U.S. EPA Region 5, June 10, 1981,
16 Conservation Chemical of Illinois stationery.

17 Q It is a cover letter again for some other
18 documents, right?

19 A It is a statement about the contents of Tank 20. -

20 Q What does it --

21 A And some other tanks.

22 Q What does it state about the contents of Tank 20?

23 A Well, I haven't finished.

24 Q Okay.

25 A You asked me what was in the letter and I was just

1 that we felt had some properties of impermeability
2 but I don't recall what it was.

3 Q In other words, you dug out an area in the
4 property and put the pickle liquor into it,
5 correct?

6 A Right.

7 Q And then you would pump the pickle liquor from
8 there into your process?

9 A No. As I said, this was a temporary condition.
10 Should I explain this?

11 Q No, I just want to know the answers to my
12 questions.

13 A All right.

14 Q Where would the material go from there?

15 A The material would go from there to Midwest Steel.

16 Q All right. And the sludge would remain in the, in
17 this dug out area you talked about?

18 A Yes.

19 Q Is it there today?

20 A Yes.

21 Q And again, where is that located in reference to
22 Exhibit 1?

23 A It's directly across the tracks and roads on a
24 northwesterly direction from the office.

25 Q So that would put it in the area -- let's look at

1 Exhibit 5 now, of what, tanks labeled 2 or 2-A?

2 A 2, 2-A and D-1.

3 Q Where the cyanide farm is now?

4 A No, the cyanide farm is to the left or to the
5 southwest from that.

6 Q 2 and 2-A are solvents then?

7 A I believe so.

8 Q Those tanks obviously were installed after you had
9 done something with this area?

10 A Much later.

11 Q Looking at what's been marked as Plaintiff's
12 Exhibit 60, and Your Honor, I guess at this point
13 since Mr. Hjersted's has no recollection, I will
14 withdraw Exhibit 59. I do believe this is public
15 record and we would ask the Court to take notice
16 of it when we provide it.

17 THE COURT: Why don't we leave it 59? If
18 you want to offer it based on a different
19 foundation, we can do it at that time.

20 MR. MCPHEE:

21 Q Let's take a look at what has been --

22 A This is a letter from a Gary Shepard.

23 Q Let me identify the exhibit for the record, okay,
24 that is Exhibit 60, correct?

25 A Yes.

1 Q What is that now?

2 A It is a letter from Gary Shepard, plant manager,
3 on Conservation Chemical of Illinois stationery to
4 Mr. Richard Creaton, dated June 30, 1976.

5 Q You were sent a copy of that letter?

6 A That's indicated on the letter.

7 Q And the substance of this letter, well, I guess it
8 pretty much speaks for itself. I would just like
9 to make it identified. This is out of the
10 Conservation Chemical files, correct?

11 A Yes.

12 Q I will show you what's been marked as Exhibit 61.
13 And ask you if you can identify that for me,
14 please?

15 A This is a letter from a Mr. J. F. Madden, general
16 manager of the Elgin, Joliet and Eastern Railroad
17 Company dated February 11, 1986, to yourself, with
18 an attachment of a letter without letterhead by
19 Mr. R. P. Beck, chief engineer, dated June 6,
20 1974, to myself. Another letter from Mr. Beck,
21 unsigned and no letterhead, to a manager of
22 Conservation Chemical Company, May 27, 1971.

23 Q Do you recall having any discussions with the EJ&E
24 Railroad Company concerning your activities on the
25 west side of the railroad right-of-way, on the

1 west side of the property that is in the area that
2 has been labeled as the Off-site Basin?

3 A No.

4 Q Do you recall being told by EJ&E that you should
5 cease to place chemical wastes into that area?

6 A No.

7 Q Do you recall receiving this letter?

8 A This letter?

9 Q I should say, do you recall receiving the two
10 letters from Mr. Beck?

11 A No, I don't.

12 Q The second letter was from May, 1971; correct?

13 A That's right.

14 Q And the first letter was from May of 1974?

15 A Yes.

16 Q And you have no recollection of any discussions
17 with EJ&E concerning your use of their property?

18 A I thought you confined that to the use of their
19 property on what was referred to as the Off-site
20 Basin.

21 Q My next question is --

22 A Or the Pie Basin.

23 Q Pardon? My next question is, do you have, do you
24 recall any discussions with EJ&E regarding the use
25 of their property?

1 A Yes.

2 Q All right. What were those discussions about?

3 A That was back in the sixties where we requested
4 the permission to use the, their property between
5 the old refinery property and the raised railroad
6 for a secondary access between our property and
7 Industrial Highway.

8 Q You have no recollection of being told by EJ&E to
9 cease using their property for the placement or
10 disposal of chemical wastes?

11 A Not at this moment.

12 Q Showing you what's been marked as Plaintiff's
13 Exhibit 62, is that a copy of a report generated
14 by Havens & Emerson to the Gary Municipal Airport
15 Authority, dated August 19, 1983?

16 A Yes.

17 Q Have you seen that report before?

18 A Yes.

19 Q Was that the report you testified about earlier
20 today that you had seen some time ago, perhaps
21 last year, or finally obtained from the City or
22 from the Airport Authority?

23 A No, I thought I testified that I had seen it this
24 year, and I obtained it through our attorneys from
25 the EPA.

1 Q This year recently, or this year sometime --

2 A 1986.

3 Q Within the last few days or some time ago?

4 A Oh, I think sometime in January, that is what I
5 remember, that it was in January that I got this.

6 Q Have you had the occasion to review that report?

7 A In a general way, yes.

8 Q Have you submitted that report along with any
9 other materials to Atec in connection with the
10 work they are doing on a closure plan for the
11 site?

12 A I believe so.

13 Q Do you expect they will rely on the information
14 that is present in that report in preparing the
15 closure plan?

16 A I think it is just part of the picture.

17 Q But you expect that they will rely on that
18 information, right, in preparing the closure plan
19 that they are working on?

20 A Well, I don't know what you mean by rely.

21 Q Well, look at the information.

22 A I would say I would think they would certainly use
23 this information.

24 Q And do you expect they will question the reports
25 of sample results and other information contained

1 in here?

2 A I couldn't say that.

3 Q But, in any event, you submitted it to them with
4 the expectation that they would use it in the
5 preparation of the closure plan?

6 A I believe I did, I gave them as much information
7 as I actually --

8 Q Showing you what's been marked as Plaintiff's
9 Exhibit 63. Is that a cover letter from Dale
10 Chapman, general manager, to the Indiana State
11 Board of Health on Conservation of Illinois
12 letterhead with a carbon copy to you, and a
13 memorandum for record dated January 18, 1982, the
14 subject being discharge from solvent storage
15 Tank 1-S, Conservation Chemical Company, Gary,
16 Indiana?

17 A Yes.

18 Q Why did Mr. Chapman prepare this report, do you
19 know?

20 A Because there was a spill in excess of, that
21 necessitated reporting. The size of the spill
22 necessitated reporting.

23 Q A spill now, from what tank?

24 A It says solvent Tank 1-S.

25 Q It was solvents then?

1 A Yes.

2 Q Spilled onto the ground?

3 A Well, solvents and material contained with the
4 solvent.

5 Q What would those materials be?

6 A Well, sometimes water would drop out of the
7 solvents on long standing and the water level would
8 be on the bottom of the solvent tank.

9 Q And there are other materials present, too, these
10 are spent solvents, right?

11 A That's all I know of.

12 Q There is no analysis other than what is in the
13 Part B perhaps of the materials that were
14 contained in that tank?

15 A We had a number of analyses taken in addition
16 to the Part B.

17 Q All right. And did you accept the statements that
18 were made by Mr. Chapman in connection with this
19 preparation of this memorandum?

20 A As I recall that, I did, yes.

21 Q Do you have any insurance coverage at the facility
22 at present?

23 A I don't believe so.

24 Q Have you ever had any permits, and I don't mean
25 interim status now, have you ever had any permits

1 from the State of Indiana to discharge any
2 pollutants or contaminants or hazardous materials
3 onto the soil of the area of the property?

4 A No.

5 Q Have you, Conservation Chemical, that is, ever
6 installed any ground water monitoring at the
7 facilities?

8 A No.

9 Q Have you taken any materials off the site since
10 December 1985?

11 A Yes.

12 Q What are those materials?

13 A Those were salvage items that we thought would
14 possibly be stolen or vandalized, that has a
15 relatively high value for their size of probably
16 more value to a sister company or another chemical
17 company than the person that might steal it. You
18 know, and sell it for --

19 Q These are now basically whatever portable valuable
20 materials that were present at the site, correct?

21 A Not all. What they could easily load into a van.

22 Q What kind of van was this, was this a truck?

23 A Yes.

24 Q So whatever could be easily removed from the
25 property was taken away, right?

- 1 A And loaded into this one van.
- 2 Q Right and taken to where, now?
- 3 A St. Louis, at the --
- 4 Q Have any of those assets been sold?
- 5 A No.
- 6 Q Have they been put to work for the sister company?
- 7 A I don't believe so, not yet.
- 8 Q Not yet. Was there an inventory made of all those
- 9 assets?
- 10 A It is being made in St. Louis.
- 11 Q Is anybody currently working at the facilities
- 12 that is employed by Conservation Chemical?
- 13 A Yes.
- 14 Q Who is that?
- 15 A Mr. Chet Nella, Jr.
- 16 Q And do you --
- 17 A On a full-time basis.
- 18 Q Do you happen --
- 19 A We have two part-time people.
- 20 Q Who are the part-time people?
- 21 A I'm sorry to say I only know their first names,
- 22 Butch and Steve.
- 23 Q Do you know what they are doing out there?
- 24 A Yes.
- 25 Q What are they supposed to be doing?

1 A Primary duty is to supplement the monitoring that
2 the EPA guard is doing.

3 Q Security, that is?

4 A Yes, secondary, of course, is to be standby in
5 case something develops.

6 Q You say in case something develops, you mean in
7 terms of a tank leaking or --

8 A That's correct. Third, is that to either turn on
9 or turn off certain circuits of light to effect
10 better lighting or save on electricity, to salvage
11 more items that --

12 Q You say salvage, take more items and pack them up
13 and send them down to St. Louis?

14 A At the present time, simply salvage them and put
15 them in one spot so we could either sell them
16 locally or sell them to the sister company.

17 Q All right. Then your intention is to sell some
18 of the assets of Conservation Chemical of Illinois
19 to other potential purchasers?

20 A Yes.

21 Q Is there a separate bank account for Conservation
22 Chemical Company?

23 A Yes.

24 Q Is there a separate one for Conservation Chemical
25 of Illinois?

1 A Yes.

2 Q Are there any funds in that account at this point?

3 A Yes.

4 Q How much?

5 A I don't know exactly.

6 Q \$50,000.00?

7 A It's a very good estimate.

8 Q \$100,000.00?

9 A Between 50 and 100.

10 Q What's your intention for that fund?

11 MR. RUNDIO: Let me object. I don't see
12 why this has any relevance. He asked if there is
13 money; the intention seems irrelevant.

14 THE COURT: Are you anticipating another
15 defense?

16 MR. MCPHEE: In this case, I think I want
17 to be concerned that the funds that are present
18 are available to be applied to activities at the
19 site and not converted to some other use.

20 MR. RUNDIO: That's just great. As soon
21 as he has some proof to support that argument, I
22 think we would listen to it, but I think there is
23 nothing--this is speculation. This is a preliminary
24 injunction hearing and unless he's got some
25 evidence, it's not relevant.

1 THE COURT: Show the objection as being
2 sustained.

3 MR. MCPHEE:

4 Q Is the Off-site Basin inside or outside the
5 boundaries of the Conservation Chemical of
6 Illinois site?

7 A The Off-site Basin is off site the property line.

8 Q Okay. We had some discussions earlier about where
9 the property line might lie with respect to the
10 pie-shaped basin. Is it your understanding that
11 the property line encloses the entire pie-shaped
12 basin or does it run through part of it?

13 A The latter.

14 Q So, some of the material that's in the Pie Basin
15 is actually off the area that you own?

16 A That's correct.

17 Q Material that you placed in the Pie Basin?

18 A That's correct.

19 Q Did you have any permits to dispose of the
20 material that is off the facility in the Pie
21 Basin?

22 A I don't believe so.

23 Q Did you have any permits to dispose of the
24 material that is in the Off-site Basin?

25 A I have a faint recollection of having either

1 myself or someone writing a letter.

2 Q But you never received a permit from the State of
3 Indiana?

4 A I'm sorry, I thought you said permission. No.

5 Q With respect to the waste that came onto the
6 facility, was it your general practice to rely on
7 the people that sent the waste to you to tell you
8 what it was?

9 A What period?

10 Q Well, let's start in the beginning of the
11 operation.

12 A That's correct, for the beginning.

13 Q Okay. Then later after the regulations under RCRA
14 became effective and you had interim status, did
15 you immediately start analyzing the material
16 yourself or did you continue to rely on the
17 generators?

18 A No, we had it analyzed. Well, what we could do,
19 we analyzed ourselves in our own laboratories, and
20 then what we could not do, we had done on the
21 outside laboratories.

22 Q In all cases, you had the material that was sent
23 to you by generators analyzed yourself?

24 A Yes.

25 Q After the RCRA rule became effective?

1 A Yes. In case I am not clear to your question,
2 could I elaborate?

3 Q Well, I really would like you to answer the
4 questions that I ask, Mr. Hjersted.

5 A Repeat the question then.

6 Q Well, I just asked you, in all cases for all the
7 waste, streamss of waste materials that came to
8 the site after November 19, 1980, did you, that
9 is, Conservation Chemical, perform your own
10 analysis on those waste streams?

11 A Yes.

12 Q Did you take regular samples of the material that
13 came to make sure the waste streams were
14 consistent?

15 A Yes.

16 Q Prior to November 19, 1980, you relied on what the
17 generators told you, right?

18 A Well, not entirely. I think that to some degree,
19 even before then, we started this surveillance or -
20 monitoring of pickle liquor that was used in
21 recycling.

22 Q But again --

23 A As part of our quality control.

24 Q As a general rule though, you would say that you
25 relied on what the generators told you in that

1 period before 1980, right?

2 A On the, when it comes to items that were disposed
3 of. When it comes to items that were recycled, we
4 did more of that surveillance ourselves.

5 Q Some of those items were disposed of on the
6 facility?

7 A Yes.

8 Q You recall incidents when the waste streams would
9 change from what the generators told you were in
10 them?

11 A Yes.

12 Q What metals are in the metal hydroxide sludges we
13 have been talking about?

14 A You asked that this morning, but I'll repeat them.
15 The predominant metal is ferrous iron, zinc,
16 selenium, manganese, magnesium, lead, copper, did
17 I say nickel, chrome, cadmium, arsenic, mercury.

18 Q Okay. When you bought Tank 20, was that
19 essentially empty?

20 A Yes.

21 Q So the material that is in there, you placed
22 there, correct?

23 A Except for whatever sludge is on the bottom.

24 Q All right. Are any of the ponds that are on the
25 facility, any of the area we are talking about

1 here, lined in any way with an impervious liner?

2 A Only to the extent that the tarry petroleum
3 residues would act as an impermeable barrier.

4 Q Nothing that you installed?

5 A That's correct.

6 Q Have you ever tested any of the area around the
7 process sump in the soil there for metals or EP
8 toxicity?

9 A Well, there is no soil around the process pump.

10 Q Soil underneath that concrete?

11 A We never broke out the concrete, no.

12 Q Would it be your testimony that there has never
13 been any migration of materials from the process
14 sump area down into the soil that is underneath
15 there?

16 A You mean underneath the sump?

17 Q That's correct.

18 A I would say it was unlikely.

19 Q Are there any cracks in the concrete out there?

20 A As I stated earlier, when we revamped the --

21 Q I just want an answer. Are there cracks in the
22 concrete in the process sump area?

23 A I didn't see any.

24 Q Are there joints between different kinds of
25 materials in that area?

1 A I didn't see any.

2 Q It is a continuous piece of, all the same
3 material, right?

4 A Yes.

5 Q And what's the material that it is made out of?

6 A Reinforced concrete.

7 Q The whole area?

8 A Yes.

9 Q No aggregate out there?

10 A In the process sump?

11 Q Yes, in the process sump area, not the tank itself
12 now.

13 A I'm sorry.

14 Q I am talking about the flat surface around the
15 process sump in the process area.

16 A Beyond the process sump?

17 Q Right.

18 A Is there aggregate? Yes.

19 Q Are there any cracks in the concrete or the
20 aggregate in the process area?

21 A What I call aggregate is not concrete. It's
22 simply aggregate. It would be no crack. It's
23 more or less --

24 Q In the concrete areas --

25 A In the concrete area, around the sump?

1 Q That's correct.

2 A Yes.

3 Q There are cracks?

4 A Yes.

5 Q And is it possible that the material that was
6 spilled in the process area went down through
7 those cracks into the soil underneath?

8 A It could be.

9 Q You never tested down there to find out, have you?

10 A No.

11 Q In the early period of your operation, we talked
12 about it a little earlier, but I am still not clear
13 what happened, in the process area in the
14 period, say, 1968 to 1970, where would material
15 that spilled onto the ground go in that area?

16 A Well, I wish you would be a little more specific
17 in what area you are talking about.

18 Q Let's go back. I believe you testified there were
19 areas in the process area, at that point that were
20 not covered with any kind of concrete or cover of
21 any sort and there was some sort of slag material
22 that was placed there?

23 A That's right.

24 Q So anything spilled on that slag material would go
25 where, down into the ground?

1 A Yes, but I am trying to remember --

2 Q Well, that's --

3 A -- what we had. See, we had -- part of that was
4 concrete lined.

5 Q Let's see, the process sump was concrete lined,
6 that's fine, there were areas out there, weren't
7 there, where the tanks were located where there
8 was nothing but slag, correct?

9 A That's what I am trying to recall.

10 Q You were present at a deposition, weren't you, on
11 the 14th of March, 1986?

12 MR. RUNDIO: There has been no answer
13 which he can be impeached on.

14 THE COURT: He hasn't, let him attempt to
15 lay a foundation. He just asked him whether he
16 was at a deposition.

17 MR. MCPHREE:

18 Q Right. And, do you recall discussing at that
19 point the process area?

20 A Yes.

21 Q And do you recall being asked what would happen if
22 a tank leaked in the period, 1968?

23 A Yes, but I don't know what tank or what specific
24 area of the process area you are referring to.

25 Q Let me just --

1 A Some of the area of the process area was lined
2 with concrete and some was not.

3 Q What areas were lined with concrete?

4 A In general, going from the process sump on a
5 northeasterly direction between the tower, the
6 property line, the old compressor building, was
7 underlaid with concrete. That was with the
8 refinery. The area --

9 Q You are indicating now on Exhibit 1?

10 A Yes. Then the area immediately southwest of the
11 process area for, to a line about even with the,
12 what I call the pump house, had concrete. The
13 pump house had concrete. The area to the
14 southeast of the process area, almost to the
15 property line had concrete.

16 Q What about under the tanks that were in that area?

17 A Well, there was some, of course, the tanks that
18 were there had the concrete under them. Now --

19 Q Concrete slabs or concrete piers?

20 A Concrete slab.

21 Q There were areas between the concrete slabs under
22 the tanks and the areas you just described that
23 was just open surface, is that correct?

24 A Repeat that question.

25 Q There were areas between the slabs that were under

1 the tanks we just talked about and the concrete
2 surfaces that you just described that were open,
3 that is open to the soil?

4 A That particular area I just described was fairly
5 continuous.

6 Q But there were gaps in between, weren't there?

7 A I don't believe so. But beyond that, there was no
8 concrete.

9 Q You say beyond that, nowhere?

10 A Then if you went to the southwest direction from
11 the pump house, that did not have concrete at that
12 time.

13 Q Then there were tanks in that area, weren't there,
14 for storing pickle liquor?

15 A I really don't remember in '68 or '70 whether
16 there were or not. I know there was some to the
17 right of that area.

18 Q Were they on concrete?

19 A Yes.

20 Q But you don't recall if there was any tanks in
21 that particular area we just talked about?

22 A They were put in later.

23 Q Any spills that happen to get into that area would
24 go where, down to the soil?

25 A In the area to the left, yes.

1 Q You were handling pickle liquor at that point in
2 that area?

3 A I believe that was the first thing we handled.

4 Q Do you know when the concrete was installed?
5 Let's be a little more specific. Do you know when
6 the concrete that was, that covers the whole area
7 was installed, or the aggregate?

8 A The area I just described was there with the
9 original refinery.

10 Q But subsequently, did you install more cover over
11 the soil?

12 A Yes.

13 Q Do you know when that was?

14 A When?

15 Q When that was, right.

16 A Well, it was in numerous stages in the seventies
17 and eighties, right on up to '84.

18 Q So, there wasn't a complete concrete area until
19 sometime in '84?

20 A Even now, there is not.

21 Q Now, with respect to high concentration product
22 or, I should say, high concentration pickle liquor
23 and product that spilled into the sump in the
24 period November 1980, what would happen to that
25 stuff?

1 A After 1980?

2 Q Yes.

3 A The practice was that, if it was a high
4 concentration, it was put back into the process.

5 Q What would happen to low concentration material?

6 A Low concentration materials, it was neutralized
7 and pumped to the basin surrounding Tank 19.

8 Q When you say neutralized, you mean there was an
9 action taken where lime slurry was mixed up and
10 poured into the sump?

11 A Yes.

12 Q During the period, 19 -- November 19, 1980 to the
13 present, how often were you at the facility?

14 A I'd say between once a month to every other month.

15 Q All right. And you had a policy that the material
16 in the process sump that was pumped over to
17 Basin 19 was supposed to be neutralized?

18 A Yes.

19 Q Was that always followed?

20 A I could safely say it was generally followed. I
21 would not be able to say it was always followed.

22 Q What is in the sphere, in the tower now?

23 A Well, I think there is still some cyanide in those
24 two vessels. I was advised last night.

25 Q You think there is still cyanide in those vessels?

1 A There is definitely sludges. My understanding is
2 that they pumped out what could be pumped.

3 Q Some time ago, right?

4 A Yes, from the tower.

5 Q So it would probably be a liquid layer at the top
6 if it's been pumped?

7 A What's that?

8 Q There would have been settling of the sludge that
9 was in there and there would be a liquid layer on
10 top?

11 A I would expect that.

12 Q And that liquid would contain cyanide?

13 A Yes.

14 Q And if the tank leaked that cyanide would go down
15 into the process area?

16 A Yes.

17 Q In your early days of the operation, where did the
18 material from the process sump go?

19 A Before '70, you mean?

20 Q Well, let's, let's start in 1968 and go on from
21 there. Did you put it in the Pie Basin?

22 A Yes. I don't recall the sequence, but as I, you
23 know, for certain, but I believe it went into the
24 Pie Basin to some extent. It went into Tank 20 and
25 it was trucked out.

1 Q All right. Late 1985, did you either direct or
2 become aware that the process sump material was
3 placed in Tank 20?

4 A Yes.

5 Q Were you told by Mr. Grimmett that there was a
6 leak in Tank 20?

7 A Yes.

8 Q Did he describe the leak to you?

9 A Well, yes. He said it was at the top of the tank,
10 and that it was rain water or clear water that was
11 coming out.

12 Q But it was processed sump material, correct?

13 A Well, it would be commingled with the rain water
14 that was in there.

15 Q Well, there is material in the process sump, isn't
16 there, Mr. Hjersted? There is liquid in the
17 process sump?

18 A Today, yes.

19 Q And there is, and that material consists of
20 precipitation perhaps that comes under the
21 property, but it also has whatever drips, leaks,
22 spills comes from the process, correct?

23 A Yes.

24 Q And the process was operating at that point when
25 the material was put into Tank 20, wasn't it?

1 A Yes.

2 Q And the material that came out of that tank would
3 go into the dug out area around Tank 20, wouldn't
4 it?

5 A Well, if there was mixing, I would assume such.
6 But not as such, because there is phase
7 separation occurring in that tank.

8 Q Well, I understand there is phase separation
9 occurring but that liquid material that is coming
10 out of the tank, that was coming out of the tank
11 at some point and it went down in that basin
12 around Tank 20, right?

13 A The liquid coming out of the tank went into the
14 basin, yes.

15 Q And that liquid again was out of the process sump,
16 correct?

17 A Yes.

18 Q Looking at Exhibit 1, again, how much of the
19 diking that was installed on the property was put -
20 up by Conservation Chemical? Let me break that
21 down for you a little bit. Did you install part
22 of the diking around Basin 19?

23 A We built it up principally, the answer is, yes.

24 Q Did you install part of the diking around
25 Basin 22?

1 A Yes.

2 Q Did you dig out and put up the dike around
3 Basin 20?

4 A The answer is yes.

5 Q And there was some working of material between the
6 API separator box and the Pie Basin, wasn't there?

7 A At what time period?

8 Q Well, sometime in 1985.

9 A I didn't think so.

10 Q At any time was there any working of the material
11 between API separator box and the Pie Basin?

12 A I think that early on that was done. That is in
13 the seventies.

14 MR. MCPHEE: Just one moment, Your Honor,
15 I think I'm almost finished.

16 MR. MCPHEE:

17 Q Do you know when you expect to submit your closure
18 plans to either the State or the Federal
19 Government?

20 A My understanding that our consultant will have
21 that data sometime next week.

22 Q Will have the data sometime next week?

23 A Yes.

24 Q Do you have any idea what that data will be?

25 A No.

1 Q Do you know if it will address the Pie Basin?

2 A I would expect it to.

3 Q Do you know if it will address Pond 19?

4 A I would expect it to.

5 Q And Pond 22?

6 A Yes.

7 Q The Off-site Basin?

8 A Yes.

9 Q The process area?

10 A Yes.

11 Q And the dug out area around Tank 20?

12 A Yes.

13 Q Also the cyanide tank farm?

14 A Yes.

15 Q The solvents?

16 A Yes.

17 Q The cyanide material?

18 A Yes.

19 Q You don't have any idea at this point how it's
20 going to address those different areas, do you?

21 A Not specifically.

22 MR. MCPHEE: I have no further questions,
23 Your Honor.

24 THE COURT: Mr. Rundio, is it still your
25 intent to cross-examine later?

1 MR. RUNDIO: Yes, Your Honor.

2 THE COURT: Okay. You may step down for
3 now.

4 MR. RUNDIO: They didn't put any of their
5 exhibits in.

6 MR. MCPHEE: I'm sorry.

7 MR. RUNDIO: And I have some objection to
8 some of the exhibits.

9 THE COURT: The first one I have is 51,
10 which is a letter dated December 4 of '85, from
11 Mr. Hjersted to Mr. McPhee, also included some
12 attachments. Any objection to that one?

13 MR. RUNDIO: No, Your Honor.

14 THE COURT: Show 51 admitted.

15 THE COURT: 52, another letter from
16 Mr. Hjersted dated May 2nd, '78, to Mr. Richards.

17 MR. RUNDIO: No, Your Honor.

18 THE COURT: Show 52 admitted. 53 is
19 another letter dated December 10 of '83, again
20 from Mr. Hjersted to Mr. McPhee.

21 MR. RUNDIO: No, Your Honor.

22 THE COURT: Show 53 admitted.

23 THE COURT: 54 is a letter dated
24 January 17 of '84, again Mr. Hjersted to
25 Mr. McPhee.

1 MR. RUNDIO: No, Your Honor.

2 THE COURT: Plaintiff's Exhibit 55 is a
3 letter from Chapman to the EPA dated July 2nd of
4 '81.

5 MR. RUNDIO: No objection, Your Honor.

6 THE COURT: Show 55 admitted. 56 is a
7 letter from Chapman to the EPA dated June 10,
8 every '81.

9 MR. RUNDIO: No objection.

10 THE COURT: Plaintiff's Exhibit 57 is a
11 memo from Mr. Hjersted dated May 1st of '78,.

12 MR. RUNDIO: No objection, Your Honor.

13 THE COURT: Show 57 admitted. '58 is a
14 memo from Mr. Hjersted again to Richards dated
15 May 1st, of '78.

16 MR. RUNDIO: No objection, Your Honor.

17 THE COURT: Show '58 admitted. '59 is
18 -- Mr. McPhee, you were withdrawing that for the
19 time being?

20 MR. MCPHEE: Yes, Your Honor.

21 THE COURT: Plaintiff's Exhibit 60 is a
22 letter from Shepard dated June 30 of '76.

23 MR. RUNDIO: No, Your Honor.

24 THE COURT: Show 60 admitted. 61 is a
25 letter from Madden of the EJ&E dated February 11,

1 of '86.

2 MR. RUNDIO: I object.

3 MR. MCPHEE: I withdraw that.

4 THE COURT: Show 61 withdrawn. 62 is a
5 report from Havens and Emerson.

6 MR. RUNDIO: I object to 62 on hearsay.

7 THE COURT: Any comment, Mr. McPhee?

8 MR. MCPHEE: I believe it was identified
9 by Mr. Hjersted.

10 MR. RUNDIO: It's identified, but he
11 didn't vouch for it. It's an out of court
12 statement. It is a statement by somebody else
13 being offered I guess for the truth of what's in
14 it.

15 MR. MCPHEE: The purpose for which it was
16 offered is that Mr. Hjersted submitted it to his
17 contractor and he expects the contractor will use
18 it and perhaps rely on it in perhaps the
19 preparation of the closure plan.

20 MR. RUNDIO: I further object on it being
21 irrelevant.

22 THE COURT: Is it being offered to
23 establish the contents of some of the different
24 soils out there?

25 MR. MCPHEE: No, Your Honor. It is being

1 offered to, as I say, establish that Mr. Hjersted
2 has submitted that to the contractor, and the
3 contractor will be using it, of course, in
4 preparing the closure plan.

5 MR. RUNDIO: I don't know that that is in
6 issue here, what the contractor is going to use.

7 THE COURT: I don't either. Show the
8 objection as being sustained to 62. 63 is a
9 letter from Chapman to the Board of Health.

10 MR. RUNDIO: No objection, Your Honor.

11 THE COURT: Show 63 admitted. I believe
12 that's it. Okay.

13
14 (Plaintiff's Exhibits Nos. 51, 52, 53, 54,
15 55, 57, 58, 60 and 63 were admitted in
16 evidence.)

17 THE COURT: With that, does the Government
18 have any other witnesses?

19 MR. MCPHEE: One other, Your Honor, and
20 Mr. Sierks will be presenting his testimony.

21 MR. SIERKS: We have one more witness,
22 Dr. Homer, and I would request if we could take
23 five or ten minutes before I call him. He will be
24 referring to about eight exhibits that were
25 identified by other witnesses, and if I could pull

1 them out now, it may speed things up.

2 THE COURT: Start again at 20 of.

3 (Brief recess was taken.)

4 THE COURT: Mr. Sierks, would you call
5 your next witness?

6 MR. SIERKS: Yes, Your Honor. The United
7 States calls Dr. David Homer.

8 DR. DAVID HOMER

9 having been first duly sworn to testify the
10 truth and nothing but the truth, testifies
as follows:

11 DIRECT EXAMINATION
12 BY
MR. SIERKS

13 Q Dr. Homer, would you please state your full name
14 and address for the record?

15 A My name is David Howard Homer. I live at 615
16 South Hale, Wheaton, Illinois.

17 Q Where do you presently work?

18 A PRC Engineering, Chicago, Illinois.

19 Q What position do you hold with PRC?

20 A I am an environmental scientist.

21 Q How long have you been with PRC?

22 A Approximately a year and a half.

23 Q And have you been an environmental scientist that
24 entire period?

25 A Yes, I have.

1 Q What are your duties and responsibilities as an
2 environmental scientist?

3 A Major responsibility I have is preparing and
4 leading a group that does endangerment assessments
5 or risk assessments of hazardous waste sites.
6 That is the major responsibility and, in addition,
7 I am involved in reviewing all work products that
8 our group produces for their technical adequacy
9 and scientific principles used in preparing those
10 documents. I am involved in performing audits,
11 environmental audits at army ammunition
12 facilities around the country, is another contract
13 we have with PRC.

14 Q Do you perform functions as a contractor for the
15 Environmental Protection Agency?

16 A Planning Research--PRC Engineering has a contract
17 before it for technical enforcement support to
18 U.S. EPA and I worked on that contract.

19 Q Will you describe what types of functions you
20 perform under that contract?

21 A Me personally, or the Company as a whole?

22 Q Personally.

23 A Okay. The endangerment assessments I talked
24 about before, these risk assessments are a major
25 function I perform.

1 Q Can you describe what is involved in an
2 endangerment assessment?

3 A An endangerment assessment is a document where we,
4 it is a report that takes data derived from a
5 specific hazardous waste facility, abandoned or
6 potentially environmental active, and evaluates
7 this data and tries to determine what potential risk
8 to human health and the environment there may be
9 due to releases from those sites.

10 Q Do you prepare plans or make recommendations to
11 the agency?

12 A The reports, the endangerment assessment reports
13 just basically state whether or not there is a
14 risk and it's up to the agency to decide what to
15 do about that risk. There are other reports that
16 I would be reviewing. In some cases, I have been
17 involved in oversights of responsible parties
18 and their actions at hazardous waste sites. And
19 in that case, we will review documents prepared by
20 responsible parties and then make recommendations
21 to the agency on what to do.

22 Q What do you mean by responsible party?

23 A Potentially or a responsible party is someone who
24 has caused a problem at a specific site. This is
25 basically in regards to Superfund sites.

1 Q Okay. What type of information do you deal with
2 or evaluate in endangerment assessment?

3 A Wide range of types of information, ground water
4 monitoring data, surface water monitoring data,
5 soils data, air monitoring data. There is census
6 data, to find out where people live, how close in
7 proximity they are to the site. It's quite a bit
8 of information that is put together to make up one
9 of those reports.

10 Q What position did you hold prior to coming to PRC?

11 A I was with the U.S. Environmental Protection
12 Agency for approximately four and a half years. I
13 work in the waste management division, and
14 specifically, in the area of the Resource
15 Conservation Recovery Act and its implementation.
16 While I was at U.S. EPA, I also prepared
17 endangerment assessments for the Superfund group
18 on occasion. That was not my full-time job but
19 that was something I did as requested by the other
20 groups.

21 Q What was your title while you were --

22 A I was an environmental scientist.

23 Q Would you describe in a little more detail what
24 aspects of RCRA you were involved with?

25 A I started with the U.S. EPA just after, or just

1 before the RCRA Regulations were put out, and so,
2 as that program grew, I was involved in all
3 aspects of the Resource Conservation Recovery Act
4 and its implementation, inspections, reviewing of
5 plans, permits, providing technical support to
6 local governments. I did quite a number of
7 seminars on the Act itself and what the
8 requirements were for the general public and
9 regulated communities.

10 Q Were you involved in enforcement actions?

11 A Yes, I was.

12 Q And what was your role in those?

13 A I wrote or authorized orders and got involved in
14 negotiations of those orders.

15 Q Did you investigate sites or assist in technical
16 preparation in enforcement cases?

17 A That's correct.

18 Q You also mentioned you were involved in
19 endangerment assessments with the CERCLA program
20 while at EPA?

21 A Yes.

22 Q Is that basically the same type of work you
23 indicate you performed at PRC?

24 A That's correct.

25 Q Do you have any prior employment history before

1 EPA?

2 A Graduate school.

3 Q Would you --

4 A Well, I also worked for the Texas Electric
5 Service Utilities -- Texas Electric Service
6 Company in Ft. Worth, Texas, for, I think it was
7 maybe about a year when I was in graduate school.
8 I was an aquatic biologist and I also worked for
9 a consulting firm called Enviroqual.

10 Q Would you describe your educational background
11 since college or since high school?

12 A Since high school, I have a bachelor's degree in
13 science from Valparaiso University. I have a
14 master's degree in environmental science from the
15 University of Texas at Dallas, and I have a Ph.D
16 in environmental science from the University of
17 Texas at Dallas. When I was at, both the master's
18 degree and the Ph.D degree, those were -- I had
19 emphasis on environmental toxicology.

20 Q What fields would that include?

21 A That is a combination of environmental chemistry
22 and environmental biology. Both those fields have
23 to be studied.

24 Q Have you had any subsequent training or
25 professional development courses since receiving

1 your Ph.D?

2 A I've taken additional toxicology courses, and I
3 have attended seminars, routinely attend seminars
4 in order to keep up with the literature on
5 environmental toxicology and environmental
6 chemistry.

7 Q You have indicated you have given seminars
8 concerning RCRA?

9 A Yes, sir. I have, I was a, I can't remember
10 exactly the title, but the OSHA had a national
11 training institute in the suburb of Chicago, and I
12 was, I guess, a visiting lecturer on the Resource
13 Conservation Recovery Act to that institute.
14 Usually about every two or three months, I would
15 give a seminar on the Act and the Regulations.

16 Q Are your qualifications or experience set forth in
17 your resume?

18 A Yes.

19 Q I'd like you to identify what's marked as
20 Plaintiff's Exhibit 64.

21 A That is my resume.

22 Q And it contains your areas of specialty and
23 relevant experience?

24 A That's correct.

25 Q What do you indicate are your areas of

1 expertise?

2 A Endangerment assessments, field investigations,
3 environmental audits, treatment disposal and
4 storage of hazardous waste.

5 Q Have you previously been qualified in court as an
6 expert?

7 A Yes, I have.

8 Q Have you testified as an expert previously?

9 A Yes.

10 Q Can you explain the types of cases in which you
11 have testified as an expert?

12 A There was a case involving LH Incorporated of
13 Ohio. And in that case, the concern was improper
14 treatment and disposal of pickle liquor. I was
15 also involved with a case involving Bronson
16 Plating of Michigan, and in that case there was
17 concern with plating sludges, and plating
18 materials in lagoons. Also I would mention in the
19 LH Incorporated case, that was also surface
20 impoundments that they were treating the pickle
21 liquor in. I've also been involved with Arrow
22 Plating of Chicago, their case is plating wastes
23 and improper handling of plating wastes, and --
24 Q What types of contamination?
25 A Cyanide contamination was the major

1 contaminational concern, contaminant concern at
2 that facility.

3 Q Was that surface impoundments?

4 A No, they had no surface impoundments at Arrow
5 Plating. It was basically in one building,
6 although, I guess they tried to make a surface
7 impoundment out of the basement, but that was not
8 intended.

9 Q Any other cases?

10 A I've also testified at the National Coatings of
11 Illinois, and in that case, was the improper
12 disposal of solvent materials.

13 Q And was there one other case?

14 A There was one other case, the J. B. Peters of
15 Ohio, where they were improperly treating, storing
16 and disposing of hazardous materials in tanks,
17 basically in tanks and containers and doing some
18 burying of drums that were in an unpermitted
19 area.

20 Q What type of work did you do in those cases other
21 than the testimony? What was the nature of your
22 role in preparing endangerment assessments?

23 A In these cases, particularly not so much in
24 preparing, I did not prepare an endangerment
25 assessment for these cases. What I did was, I

1 basically did everything but write the report.
2 You still have to review all the available data,
3 and try to determine if there was a risk to human
4 health or the environment by the way these
5 facilities handled their waste materials,
6 although no report was actually written.

7 Q And you testified in each one of those five cases?

8 A That's correct.

9 Q As an expert?

10 A Yes.

11 Q Are you familiar with the data and the testimony
12 indicating what types of wastes are contained or
13 found at the Conservation Chemical site in Gary,
14 Indiana?

15 A Yes.

16 Q Are any of the wastes you were involved with at
17 the sites you have just indicated previously
18 similar to the wastes found at the Conservation
19 Chemical site?

20 A The facilities that dealt with plating wastes and
21 the facilities that dealt with pickle liquor, they
22 may not be exactly the same but they may be very
23 similar.

24 Q Based on the, your work with RCRA what, are you
25 familiar with the regulatory requirements of RCRA?

1 A Yes, I am.

2 Q Do you have a general knowledge of program
3 implementation, EPA policies?

4 A Yes.

5 Q Are you familiar with the definition of a surface
6 impoundment, is that the term that is used under
7 RCRA?

8 A Yes, I am.

9 Q Do you recall when you first became involved with
10 the Conservation Chemical site?

11 A It was I believe August of '85.

12 Q And what was the nature of your involvement at
13 that time?

14 A U.S. EPA requests any work assignment to PRC
15 Engineering requesting assistance in the case, and
16 I was chosen as the project manager for that work
17 assignment. And subsequent to that work, you
18 know, the establishment of that work assignment, I
19 went and visited the site on September, I believe -
20 it was September 18, 1985, toured the site with
21 Rodney Gaither of the U.S. EPA and Mr. Grimmett
22 of Conservation Chemical.

23 Q Okay. Just for the record, did you visit the site
24 again recently?

25 A Yes, March 19, I believe is the date. Last

1 Wednesday.

2 Q During this next question, I would like you to
3 describe what you observed when you went around
4 the site and if it's helpful, you can refer to the
5 exhibit that is near you on the easel. Okay. Did
6 you have any discussion with Mr. Grimmert before
7 you began your tour of the site?

8 A Before we began the tour, he just basically
9 explained what they did at the facility which was
10 to take ferrous material, you know, ferrous
11 chloride that they are receiving from pickle
12 liquor from the steel mills and make ferric
13 chloride, and then he proceeded to walk
14 Mr. Gaither and I around the site explaining what
15 each of the structures, what they were, what they
16 contained to his knowledge, and I just basically
17 observed the general condition of the site.

18 Q Did you tour the process area, the area where they
19 made ferric chloride?

20 A Yes, we did.

21 Q Did you tour the process sump area, and observe
22 that?

23 A Yes.

24 Q And then, can you describe where you went and if
25 you have any impression, generally, as to what you

1 observed?

2 A Basically what you want me to do is kind of
3 recreate the tour that Mr. Grimmett gave us?

4 Q Yes, I would like you to describe what you
5 observed and any impressions you may have had at
6 that time.

7 MR. RUNDIO: Let me object. I don't know
8 if they are going to tender him as an expert
9 witness, if so, I would wish they'd do it, number
10 one. Number two, I am not sure where we are going
11 on this testimony. It seems like it's
12 cumulative. We have had I don't know how many
13 people out there that have seen the site. Unless
14 this witness can add something new, I ask they not
15 put in cumulative evidence.

16 MR. SIERKS: I would like to, I will
17 offer Dr. Homer as an expert of the United States
18 in the area of environmental toxicology, and he is
19 being offered to give his opinions as to the
20 conditions on site, what types of hazards those
21 conditions may pose and, based upon his knowledge
22 of RCRA, what type of closure plan or general
23 plan should address the areas of contamination at
24 the site.

25 THE COURT: Any objection to --

1 MR. RUNDIO: I don't think any of that is
2 relevant. We are not here today to debate what
3 goes into a closure plan. This is a preliminary
4 injunction hearing. The issues were formed by the
5 United States. And they say, they have asked for
6 preliminary relief, no further hazardous waste in
7 any of the four, what they call land disposal
8 units. We are not doing that. They have asked to
9 submit and implement a closure plan.

10 There is no question that one will be
11 submitted, the issue is what is included in that
12 closure plan. We have had quite a bit of
13 testimony on facts and even some argument. They
14 have asked that we comply with certain RCRA
15 Regulations for land disposal units if they are
16 out there. It's been acknowledged that we haven't
17 complied, that our ability to operate these units
18 under the law has ceased. And they have asked for
19 no further treatment storage or disposal, we are
20 not doing that. They have asked for some other
21 incidental relief.

22 But, they haven't asked for anything to
23 do with environmental toxicology, risk assessment
24 which, as I understand, is not a RCRA term. They
25 have already put in, through Sally Swanson, EPA's

1 apparent RCRA policy. They have described the site
2 in great detail. If there is going to be any type
3 of a risk assessment done here, then I suggest
4 that it is done under CERCLA, not under RCRA, and
5 as a matter of fact, that's exactly our point,
6 there are other statutes other than RCRA.

7 As I understand it, the RCRA closure plan
8 requires a plan to come in and close a site and to
9 do certain things, and maybe I am wrong, but my
10 thought, at least on this was risk assessment is a
11 CERCLA term and not a RCRA term. So, I wish they
12 could be a little more precise because right now,
13 I find all of this either irrelevant. And to the
14 extent he is going to tell us what else is at the
15 site, I think it is cumulative unless he's got
16 something new.

17 THE COURT: Mr. Sierks?

18 MR. SIERKS: Your Honor, first, one of
19 the elements of preliminary relief is the possible
20 irreparable harm to the Government. I indicated
21 in my opening comments that we traditionally do
22 not have to establish irreparable harm where we
23 are seeking to enjoin a violation of law, but we
24 feel the urgency or need for injunctive relief is
25 strengthened by the testimony that there are

1 hazardous wastes at the site and what type of
2 hazards. We are not giving this in great detail
3 but generally what types of hazards there are.

4 Further we are asking the Court to order
5 the defendants, and in particular Conservation
6 Chemical to prepare a closure plan,
7 and in reading our relief, I think that what the
8 scope of that plan is, is at the heart of what we
9 are asking here. And we would like the Court,
10 when issuing an order, if it does grant our
11 relief, to issue a specific order that a closure
12 plan has to be prepared addressing the various
13 areas of this site which, at least in my
14 understanding, are contested.

15 The defendants are arguing there is not
16 hazardous wastes in some of those areas, or those
17 areas are not regulated by RCRA.

18 So, this witness is to offer
19 basically two areas: in the area of irreparable
20 harm, what types of hazards generally this might
21 pose in the area of whether injunctive relief
22 is necessary or how strong the need for injunctive
23 relief is; and the scope of closure that is
24 required.

25 THE COURT: Show the objection as being

1 overruled, but again, there has been a lot of
2 testimony from several witnesses, so you have a
3 limited right to put on cumulative testimony.

4 MR. RUNDIO: Could we have a
5 clarification on whether or not he is going to be
6 qualified as an expert and, if so, the fields in
7 which he is going to be qualified. They tendered
8 him as an expert, I'm not sure as an expert on
9 what. Maybe they can clarify that to see if I
10 have further objection.

11 MR. SIERKS: Your Honor, he is, we are
12 offering him as an expert in environmental
13 toxicology and he has an expertise in preparing
14 remedial plans addressing contamination at sites,
15 and to that extent, we believe he is qualified to
16 give his opinion as to what areas the closure plan
17 should address at this site, and whether any of
18 the chemicals present a hazard.

19 THE COURT: Any objection?

20 MR. RUNDIO: Yes, Your Honor. My
21 understanding is that that is not a RCRA concern.
22 That sounds awful -- to me it sounds all like
23 CERCLA, where you have a part of the case at bar,
24 that says here is how do you a risk assessment,
25 here is how you look at what the impact is on

1 whatever the environment is, and based on that you
2 come up with some type of a remedial action or
3 closure plan.

4 My understanding of RCRA is, you have
5 certain steps that you have to put into a closure
6 plan and it becomes a technical review, not so
7 much a risk assessment. And maybe I've got this
8 wrong, if they are focusing though on risk
9 assessment, it seems to me like what they are
10 talking about is another statute. And I don't see
11 how at this point they can start talking about
12 risk assessment in a closure plan unless they
13 concede that one of the elements that determines
14 what goes in the closure is risk assessment.
15 And to my knowledge, that would be something that
16 is not clear from the regulations, but if they
17 want to argue that or point it out, I will listen
18 to it. But I just, I see we are going away from
19 what they are asking for, and I just find that we
20 are not focusing on what the relief is they are
21 asking.

22 MR. SIERKS: Maybe I wasn't clear enough.
23 Basically we are not offering Dr. Homer to give a
24 risk assessment of this site. More particularly,
25 the opinions he is going to be offering are

1 primarily how much sampling and analysis should be
2 done. One of the requirements of RCRA is to
3 determine the nature and extent of hazardous
4 waste contamination at the site, and his testimony
5 primarily will be, should this be an area of
6 concern addressed in a RCRA closure plan. We are
7 not offering him as to whether there might be a
8 hazard under another statute.

9 MR. RUNDIO: Well, my understanding is
10 the burden is on us. If the EPA, if the EPA wants
11 to offer a closure plan for the site and then tell
12 the Company, well, accept it or not, or criticize
13 it, we would do that. But my understanding, we have
14 already said we will do a closure plan, and it is
15 up to us to do the closure plan, under the
16 regulations, and submit it to them. They look at it
17 and send it back and say it's fine or it's not
18 fine, and we argue about that. But I think for
19 them to assume that our closure plan isn't going
20 to be adequate, is incorrect. They have no basis
21 for saying that.

22 And then to try to litigate, you know, in
23 a court proceeding what is basically a technical
24 argument over which, you know, I can't believe
25 they are going to give the Court, at this early

1 juncture, more or less control over what goes into
2 the closure plan. It seems to me we are arguing
3 an issue that administrative remedies have not be
4 exhausted on. It's my understanding we submit the
5 closure plan, they comment on it, we either agree
6 or we disagree, and then, if there is a
7 disagreement, they have an option of filing an
8 administrative case or bringing us into Federal
9 Court. There has been no disagreement yet.

10 It's as if they are trying to get the
11 Court to make some kind of a determination,
12 advisory opinion of what should go in the plan.
13 And I don't believe that that is what the
14 preliminary injunction has sought, and it comes as
15 a surprise to me I guess that they are even asking
16 for it. I guess I just don't see where we are
17 going. I thought we -- I thought we narrowed the
18 issues, okay, what goes in the plan, this is
19 surface impoundment, that's a surface impoundment.
20 If he is going to testify along those lines, if it
21 is not cumulative, I'd say fine, but anything else,
22 I don't think is relevant.

23 MR. SIERKS: We may be looking at two
24 different records. We have already established
25 that we have had an initial closure plan in 1981,

1 we have had another plan come in with a first
2 Part B. We have had a revised plan come in, they
3 have all been incomplete. We are asking for a
4 closure plan and what we are trying to get the
5 Court to order it, not just a closure plan but more
6 specifically closure plan has to address this
7 area, this area. We are trying to get it specific
8 enough so we don't get another incomplete closure
9 plan three months from now or whatever time the
10 Court may order. And that's really our final
11 area. We haven't had testimony as to exactly what
12 should be addressed. We have had the
13 evidence as to where contamination has occurred,
14 and this witness based on his expertise will
15 establish how he would define in preparing a
16 closure plan, the areas of the site that should be
17 addressed.

18 THE COURT: I am going to talk to the
19 attorneys in chambers. Something has been
20 troubling me today. Maybe we
21 could work something out. Why don't we meet in
22 chambers?

23 (Brief recess was taken.)

24 THE COURT: It's my understanding that
25 the parties have reached an agreement that we are

1 going to make of record at this time. Mr. McPhee?

2 MR. MCPHEE: Mr. Rundio, I will ask you
3 to correct me at the point along the discourse
4 here that is different from your understanding of
5 what we talked about and agreed to.

6 MR. RUNDIO: Talk slow, please.

7 MR. MCPHEE: I will. The first point, we
8 have an agreement that Conservation Chemical
9 Company of Illinois is going to submit a
10 RCRA closure plan to the State of Indiana by
11 May 1st, 1986. And as part of that plan there
12 will be a cover letter which reserves a number of
13 arguments that are still in dispute between the
14 parties as to whether or not portions of the
15 facility are covered in the Resource
16 Conservation Recovery Act.

17 As part of that plan, there will be
18 provisions for a sampling and analysis plan of all of
19 the areas of the facility to determine the
20 presence or absence of hazardous wastes, as
21 defined in the Resource Conservation Recovery Act.
22 Further, as to each of the areas of the facility
23 that are or are arguably management units under
24 the Resource Conservation and Recovery Act
25 including the surface impoundments or areas that

1 are still in dispute between the parties and
2 are denominated as basins, there will be a
3 description of what needs to be done with respect
4 to those areas, as if in closure they were, in
5 fact, RCRA regulated units. That determination
6 will be based upon the sampling that is done as
7 part of the sampling plan.

8 Further, there will be a description of
9 ground water monitoring for the facility that will
10 be based upon the decisions that are made--I
11 should strike that back a little bit. It will be
12 based upon the results of the sampling and
13 analysis that is done of the facility and in
14 accordance with the RCRA Regulations for ground
15 water monitoring.

16 There will also be provisions determining
17 or stating whether materials in the various units
18 on the facility will be left on site or removed
19 from the property for final disposal in accordance
20 with the regulations. For those areas where waste
21 is to remain on site, there will be provisions
22 defining the long-term post-closure monitoring and
23 care for those units, again, in accordance with
24 the RCRA Regulations on post-closure monitoring
25 and care.

1 The stipulation is contingent upon
2 Mr. Hjersted's determination whether substantial
3 costs beyond those he anticipates at present will
4 be incurred, and he has agreed to indicate to the
5 United States in writing, by close of business
6 tomorrow his agreement to go forward with the plan
7 as described. If he fails to so notify the United
8 States, it's stipulated that he will proceed with
9 the plan as described.

10 Is that your understanding, Mr. Rundio?

11 MR. RUNDIO: Yes.

12 THE COURT: It is also my understanding
13 that the Government, being the United States and
14 the State of Indiana, will respond to the plan
15 within 90 days, is that --

16 MR. MCPHEE: That's correct, Your Honor.
17 The State of Indiana has regulations that provide
18 for public notice and other administrative
19 elements with respect to dealing with closure plan
20 submissions that do require a 90-day period of
21 completion. We will be, that is after receipt of
22 the plan, of course.

23 THE COURT: Any additions or corrections
24 Mr. Rundio.

25 MR. RUNDIO: No, Your Honor, I have

1 nothing.

2 THE COURT: Mr. Hjersted, you understand
3 what your attorney and the attorneys for the
4 Government have made of record here?

5 MR. HJERSTED: I think I have.

6 THE COURT: Okay. As I mentioned, that
7 will be an order of this Court. I will approve
8 the stipulation and direct the parties to comply
9 with that agreement and stipulation. If there are
10 any problems, I trust that either side will notify
11 me and, if necessary, we will set it down to
12 complete our hearing.

13 Anything further from either side?

14 MR. RUNDIO: Nothing from the Defendants,
15 Your Honor.

16 MR. MCPHEE: Before we close, just a
17 minute off the record.

18 (Discussion held off the record.)

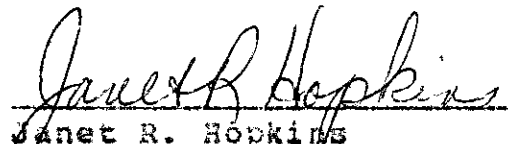
19 MR. MCPHEE: We are done.

20 THE COURT: Okay. Thank you.

21 (WHICH WERE ALL THE PROCEEDINGS HAD
22 THIS DATE IN THE FOREGOING CAUSE.)
23
24
25

1 STATE OF INDIANA)
2) SS:
3 COUNTY OF LAKE)

4 I, Janet R. Hopkins, certify that the foregoing
5 transcript is a true and accurate transcription of my
6 shorthand notes to the best of my ability, dated this
7 13th day of July, 1986.

8
9 
10 Janet R. Hopkins
11 Certified Shorthand Reporter
12 Registered Professional Reporter
13 Notary Public, County of Lake
14 Merrillville, Indiana

15 My Commission Expires:
16 January 1, 1989.
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I N D E X

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1 done, based on my visual inspection of the site, I think
2 it was apparent to me that the fact that inspections
3 were done had not led to corrections of problems. In
4 other words, if I observed leaking drums, I could go
5 back into the inspection records and -- drums isn't a
6 good example because they didn't include the drums in
7 their inspection schedule. But, for example, with
8 tanks, if a tank had leaked, it would not necessarily
9 get fixed. They would do the inspections but not
10 correct the problems identified.

11 The drum storage area was not included in the
12 inspection schedule.

13 Although Mr. Poizel said there were no smoking
14 signs in appropriate areas, I did not or was not able to
15 observe those no smoking signs.

16 Q When would no smoking signs be required under the
17 regulations?

18 A If there were any ignitable hazardous wastes it would be
19 important to prevent sources of ignition from being in
20 proximity to those ignitable wastes.

21 Q Just for the record, these comments that you've been
22 reciting, would these indicate violations of R.C.R.A.
23 regulations?

24 A Yes.

25 Q Any other comments you had noted on this Exhibit?

1 A Yes, I have several additional comments.

2 I did observe evidence of releases in numerous
3 locations throughout the facility. At that point in the
4 inspection report, I reference my remarks and in my
5 remarks I had indicated that Mr. Poizel had admitted
6 there had been leaks of cyanide and chlorine at the
7 facility, although chlorine is not a R.C.R.A. regulated
8 hazardous waste.

9 Q For the record who is Mr. Poizel? Who was he at the
10 time?

11 A Mr. Poizel was the plant manager at the time of this
12 inspection.

13 Q And evidence of releases of what?

14 A Well, evidence of releases of the contents of drums.
15 Evidence of releases around tanks coming from weep
16 holes. Evidence of releases and spills in general all
17 around the facility just in looking at the ground.

18 Q Do you have any -- you can continue if you have any
19 other comments noted.

20 A Okay. In my opinion at the time I felt there were not
21 adequate safety equipment available at the facility. My
22 note was although there was sodium hypochlorite for
23 cyanide spills and fire extinguishers, there really was
24 nothing in the way of absorbant materials to deal with
25 spills and nothing in the way of decontamination

1 equipment.

2 There was not adequate aisle space for obstructed
3 movement in the drum storage areas.

4 The list of emergency equipment at the site did not
5 include the quantity and capability of that equipment.

6 I noted under emergency procedures that there had
7 been an emergency -- there was spill from a leaking
8 tank, and that they had notified the state on January
9 27th, 1983 of the accident that occurred on January
10 20th, 1983, and that the material spilled had been
11 pumped to another tank.

12 Now, the next section of the inspection report
13 deals with the manifest system and record keeping.

14 And this is something that I base on information
15 that Mr. Poizel told me directly.

16 The requirement is that the facility use the
17 manifest for any shipments of hazardous waste going off
18 the facility. And Mr. Poizel told me that he had
19 shipped some waste which they removed from the sump
20 off-site and it with characteristic for chromium.

21 It contained 28 milligrams per liter of chromium,
22 which exceeds the limit for E.P. toxicity, and he had
23 not shipped it out under a manifest, and that he had not
24 shipped any waste off-site since that date in January of
25 1983.

1 This is the kind of violation where it's very
2 difficult to prove it other than this was what Mr.
3 Poizel had told me.

4 Continuing in the inspection report, the review of
5 the closure plan was done that day was a very cursory
6 one, and it was more to establish that in -- that
7 whether or not there was a closure plan on the facility
8 at the time and there was. And then it asks very simple
9 questions about how much of the facility was going to
10 stay unclosed or the facility life, about the waste
11 inventory, year of closure and a schedule for beginning
12 closure activities.

13 And the one thing that I noted the plan lacked was
14 an estimated year for closure. At the time the plant
15 manager had told me that he thought the airport
16 authority was going to be purchasing the facility
17 through condemnation to use as a runway extension, and
18 he thought that would take place by 1985.

19 The next section is on the use and management of
20 containers, and really the containers were not in good
21 condition. They weren't compatible with the wastes
22 which were in them which can lead to deterioration of
23 the containers.

24 The containers were not managed to prevent leaks.
25 They were stored outside exposed to elements. Not all

1 of the containers were stored closed. I observed
2 containers which either did not have a lid on them or
3 else did not have a bong keeping the container closed.
4 Mr. Poizel stated that he looked at the containers
5 weekly to check for leaks or defects but he did not have
6 any records to support that.

7 At the time of the inspection, there were -- there
8 was a problem with reactive waste being stored too close
9 to each other. There's a R.C.R.A. requirement that
10 ignitable and reactive waste be stored at least 15
11 meters or 50 feet from the property line. There were
12 some of those types of wastes that were not.

13 And also the containers were not separated with
14 physical barriers or sufficient distance. There were
15 some drums of hydrofluoric acid that were stored
16 somewhere between 40 and 50 feet within the -- near a
17 cyanide storage tank.

18 I'm looking right now at the page on tanks, and I
19 made a comment that they were not using tanks that were
20 compatible with the waste that would not cause
21 corrosion. In other words they were storing some waste
22 in tanks that would or could lead to corrosion.

23 The tanks on site did not have the required 60
24 centimeters or two feet of freeboard, specifically the
25 sump in the pit and -- these are both tanks by

1 definition, if I can refer to -- if I can refer to
2 Exhibit 5, Plaintiff's Exhibit 5, one of those is
3 labeled "pit" on that Exhibit, and I think -- I've heard
4 it referred to as the A.P.I. separator box. It's down
5 near the right there.

6 Q It's in this, what southwest corner?

7 A It's in the southwest corner. Yes, it's very close to
8 the surface impoundment at the southern-most corner of
9 the facility. And the other one was the area marked
10 "sump" on Plaintiff's Exhibit 5. That is almost
11 immediately south of the office shops; it's near the
12 process area. There was not two feet of freeboard in
13 either of those tanks.

14 As far as the freeboard in other containment
15 structures, I was not able to check it. I believe one
16 of the tanks on the -- at least one of the tanks on the
17 facility has an open top, but I was not able to observe
18 the contents of that tank.

19 Another problem was that there were really no dikes
20 to speak of around the tanks containing the reactive
21 cyanide waste, and if there were to be a major leak or
22 spill from one of those tanks, there would be nothing to
23 contain it, and it could have reached other wastes with
24 which it could have reacted.

25 Now, the next page is for surface impoundments, and

1 I had drawn a line through it, and then proceeded to
2 make comments on it. One of the questions is again
3 about freeboard on the surface impoundments, there was
4 not adequate freeboard on the impoundments. In fact the
5 impoundment in the southern-most corner of the facility
6 in its end up by the north -- that runs on the northern
7 end of that surface impoundment, the wastes in it were
8 almost level with the top of the impoundment.

9 Q If I can ask you to stop for a minute.

10 A All right.

11 Q This is another page -- copy of Plaintiff's Exhibit 5,
12 which I believe -- would that be Exhibit 35.

13 A Yes.

14 MR. SIERKS: Okay. Mark this Plaintiff's
15 Exhibit 35.

16 (Whereupon, documents produced were
17 marked Plaintiff Exhibit 35
for identification.)

18 MR. SIERKS:

19 Q Could you indicate on here what areas you're referring
20 to in your testimony?

21 A The area I just referred to by that southern-most
22 surface impoundment is the area I'm circling now where
23 it was almost level with the dike of the surface
24 impoundment.

25 Q The line you drew is in what is labeled pie-shaped

1 basin?

2 A Yes. It was -- there also probably was less than 60
3 centimeters of freeboard along the northwest corner that
4 joins the area I just indicated before. So, in other
5 words the two northern sides of the impoundment did not
6 have adequate freeboard.

7 Q And that impoundment again you're referring to is the
8 pie-shaped basin?

9 A Yes. On the next -- the next question is do earthen
10 dikes have protective covers? The only thing that I
11 really observed at the site that would meet what I
12 consider being a -- excuse me, the only thing that I
13 observed at the facility that really resembled a dike
14 was some piles of limestone around the cyanide tanks. I
15 think if my memory serves me correctly, the piles were
16 perhaps five or six inches in height and they weren't --
17 I don't recall them being compacted. I think it was
18 pretty much just poured into the area.

19 There would have been what I think would meet the
20 definition of a dike or what one could define as a dike
21 at this northern end of the surface impoundment, that
22 the facility calls the pie-shaped basin.

23 And there really was not any vegetative cover or
24 anything on it to protect it.

25 The freeboard level was not inspected daily.

1 Q Is that based on your review of the record or a
2 discussion with Mr. Poizel?

3 A It's based on information from Mr. Poizel. And the
4 other two questions on that page I indicated were not
5 inspected.

6 In my comments I noted that the following wastes on
7 site have not been analyzed, the contents of the drums
8 stored in the area near the cooling tower near the
9 northeast section of the site; solids stored on site;
10 liquid wastes stored in the ten feet deep pit with which
11 is a tank and has been called the A.P.I. separator box.

12 And I wrote here, "And potentially contaminated
13 soils from the pie-shaped basin and the impoundment in
14 the southern corner of the site."

15 Q Which impoundment are you referring to there?

16 A Okay. There I'm referring to the impoundment on the
17 southern and western side of the facility around tank
18 19. At the time I inquired of Mr. Poizel as to whether
19 or not that was surface impoundment, and he said, "No,
20 it was not." And I asked him what was in that
21 impoundment, and he said that the contents of the
22 impoundment were not hazardous.

23 I believe we also discussed whether or not the
24 process on-site, in other words, the recycling of the
25 spent pickle liquor into the ferric chloride generated

1 any waste, and he said, "No, it did not."

2 And my feeling at the time was that such a process
3 would generate waste and sludges, and because there are
4 solids contained in pickle liquor, and they had been
5 adding lime to stabilize or neutralize the waste coming
6 out of that process. And that those wastes would have
7 to go somewhere, and I asked him -- well, it wasn't so
8 much asking him what happened to the waste. It was
9 more, "Are there wastes generated," and he said, "No,
10 there weren't."

11 It was my opinion at the time that the wastes that
12 I observed in that impoundment around tank 19 were most
13 likely a result of waste generated from the process.

14 MR. RUNDIO: Your Honor, I object. That is a
15 direct contrast to what the testimony -- she just said
16 the person told her, and she is giving an opinion with
17 no foundation.

18 MR. SIERKS:

19 Q What is your basis for that opinion.

20 A Well, my basis for that opinion is that the material was
21 sludgy in nature. It had a reddish brown color to it,
22 which is the color of iron -- iron bearing wastes, and
23 that although he said there was no waste generated, that
24 did not make sense to me. And as I stated before it was
25 my opinion that although he said there was not hazardous

1 waste in that impoundment that that to me did not make
2 sense based on what I know about the facility.

3 MR. RUNDIO: Your Honor, I move to strike.
4 There's no foundation for that opinion. She's not
5 testified that she knows anything about processes.
6 She's an investigator for the E.P.A. She has not given
7 any basis that she knows about the process that was
8 being operated. She just said she thought there was
9 some waste; and in light of someone telling her there
10 wasn't, she now testifies that she formed an opinion
11 that there was.

12 THE COURT: Show the motion to strike as being
13 denied. I believe it goes to the weight and not the
14 admissibility of her opinion. She's testified
15 concerning her training and experience.

16 MR. SIERKS:

17 Q Did you discuss with Mr. Poizel whether any process
18 waters went into the pond 19 area or what those liquids
19 were at this time?

20 A I don't remember specifically discussing process waters
21 going into pond -- or the surface impoundment around
22 tank 19. He stated that all of the process waters went
23 into the sump.

24 Q And you did not inquire at that time where the waters
25 from the sump were placed?

1 A Yes, I did. And he said that they didn't go into any
2 impoundments on the site. That was part of the reason
3 why I had trouble understanding where the waste on the
4 site went.

5 Q Did he indicate where they did it, where the process
6 waters did go?

7 A Into the sump.

8 Q After they went into the sump?

9 A No, he did not.

10 Q And during your inspection at that time, did you notice
11 any dikes or earthen barriers around either tank 19 or
12 tank 22?

13 A No, I don't remember observing dikes per se. Those
14 areas instead seemed to be more of natural depressions
15 rather than diked areas.

16 Q Did you have any more comments at this time based on
17 that Exhibit?

18 A Not based on that Exhibit, no.

19 Q Did you take any photographs during your inspection in
20 1983?

21 A No, I did not.

22 Q Did you later visit the site, you indicated a second
23 time?

24 A Yes, I visited the site on January 4th, 1984.

25 Q What was the purpose of your visit at that time?

1 A At that time I was going there to do an over site
2 inspection with the state. I was supposed to meet Ted
3 Warner who's a compliance monitoring inspector and
4 Robert Downey who's a geologist with the state, and I
5 was to observe them conduct an inspection at the site.

6 Q Ted Warner is also with the State of Indiana?

7 A Yes, he is.

8 Q And did that inspection occur?

9 A It did not occur as we had planned it to occur. We were
10 unable to meet Mr. Warner. At the time he had pneumonia
11 and could not come to the site.

12 So, Mr. Downey and I proceeded to tour the site.
13 We talked to Mr. Poizel before we walked around the
14 site. And at the time of the site visit, there was
15 probably ten to twelve inches of snow on the site, so
16 much of what was there was covered.

17 I wanted to make sure that Mr. Downey didn't step
18 into any areas that might not really be safe. I pointed
19 out to him the locations of the ground water monitoring
20 wells which were installed by U.S. E.P.A.'s contractor
21 as part of its C.E.R.C.L.A. investigation of the site.

22 He and I observed there were no additional wells
23 that we could find on the site, and Mr. Poizel informed
24 us that ground water monitoring wells had not been
25 installed by Conservation Chemical at that time.

1 Q Do you recall how many wells were installed under the
2 Superfund program by E.P.A.?

3 A If my memory serves me it's either five or six.

4 Q And do you know whether those would be sufficient for
5 ground water monitoring required under R.C.R.A. for
6 surface impoundments at the site?

7 A I don't feel that I'm -- first of all, I don't feel that
8 I'm qualified to make a judgment as to whether or not
9 those wells would meet the R.C.R.A. requirements, and I
10 don't know if the wells -- how many of them were
11 installed up-gradient, and how many were installed
12 down-gradient.

13 Q Would that require an area beyond your expertise?

14 A Yes.

15 Q Did you take any photographs of your investigation in
16 January of '84?

17 A Yes, I did.

18 Q I would like to hand you what's been marked as
19 Plaintiff's Exhibit 36, and ask if you can identify
20 these?

21 A These are prints of photographs that I took while I was
22 at the site on January 4th.

23 Q Would you briefly describe the photographs, indicate
24 which page you're on, and just briefly describe what's
25 shown in the photographs?

1 A Okay. The photograph that I've numbered number one is
2 of the surface impoundment at the southern-most corner
3 of the facility, the one that C.C.C.I. calls the
4 pie-shaped basin. It shows that it's partially covered
5 in snow. The snow on the surface appears to be
6 discolored or brown.

7 Area showing through the snow appear to be somewhat
8 wet, although not completely wet, and dark in color. It
9 shows that the surface impoundment comes up pretty close
10 to the edges of the impoundment.

11 The second picture is of the tank that's located
12 just north of the pie-shaped basin that the facility
13 referred to as the A.P.I. separator box.

14 It -- the snow in this picture comes up probably
15 within about six inches or so of the top of the concrete
16 sides of the box.

17 And there really isn't much else to say about that
18 particular photo.

19 The next photo, numbered three, I took from the
20 very southern-most corner of the facility. Looking at
21 Exhibit Number 5, it would be in the very bottom corner,
22 and I was looking north, northeast at the facility.

23 It just shows the surface impoundment in the
24 foreground and some of the tanks in the background.

25 Photo number five was taken of some of the cyanide

1 storage tanks that are located at the center of the site
2 immediately west of the railroad siteing, and I think --
3 well, I can't tell you exactly which tanks they are
4 based on the numbering system, but they are taken facing
5 eastsoutheast. And looking through the tanks, you can
6 see the cracking tower which is the other side of the
7 railroad tracks toward the eastern part of the facility.

8 Photo number five is also of some of the cyanide
9 storage tanks. I took this photo immediately adjacent
10 to the tanks in the previous photo. And it shows that
11 the -- at least one of these tanks has some rust on the
12 facility. And the tanks appear to be frosted part way
13 up the tank and then that frost stops, and that to me
14 indicated perhaps that might be the level of the waste
15 inside the tank.

16 Number six is a picture of the drum storage area.
17 It was taken facing west, and that would be on Exhibit 5
18 in the area marked main drum storage area. In the
19 background you can see, I believe it's tank 22, although
20 I'm not sure.

21 I'm sorry. In the background. -- in the background
22 I believe that might be tank 19.

23 The drums are stored fairly close to one another.
24 There are drums marked hydrofluoric acid in the middle
25 of the picture. The drums are exposed to the elements.

1 The next photo is also of the drum storage area,
2 and that one was taken facing northeast. In the
3 background of the photo would be the area northeast of
4 the facility outside of the boundaries shown on Exhibit
5 5. This also shows drums marked H.F., which Mr. Poizel
6 indicated contained hydrofluoric acid. And some of the
7 drums, and not specifically the hydrofluoric drums but
8 some of the other drums in the photo appear to be rusted
9 in less than ideal condition.

10 The eighth picture is also of drums in the drum
11 storage area near the cooling tower. The cooling tower
12 is indicated in Plaintiff's Exhibit Number 5 near the
13 western border of the facility part way between tank 19
14 and tank 22. These drums are in fairly -- I wouldn't
15 say poor condition, but they are not in the best of
16 condition. There's evidence of rust and some denting,
17 and you can see in the background there are some drums
18 that appear to be laying on their sides. Mr. Poizel was
19 not able to tell me whether or not those drums contain
20 hazardous waste or not.

21 In addition in this drum storage area I did observe
22 drums containing hazardous waste with the bong open so
23 the container would not be considered closed.

24 One of the drums -- this is photo number nine.
25 This is a drum I observed near the storage area by the

1 cyanide tanks with the bung open and it's marked
2 solvents with oil on top.

3 That would have been closer, I think in the area by
4 the tank marked either 8-A or 6-A, on Exhibit Number 5.
5 It would have been like southwest of 8-A and 6-A.

6 And Mr. Poizel did what E.P.A. inspectors usually
7 characterize as the sniff test to determine what was in
8 the drum and he smelled the contents of the drum at the
9 bunghole and said it was solvents.

10 Photo number ten was taken also near the cyanide
11 storage tanks. You can see a portion of Mr. Poizel in
12 the photo, and the drum has a leak in the side. You can
13 see waste weeping out of the leak.

14 The next photo is number eleven, and I believe that
15 was tank 19, and it shows evidence of oil accumulating
16 around the bottom of the tank and staining the snow.
17 This photo was taken facing west looking at the tank.

18 Now, the next two photos, twelve and thirteen are
19 of -- I don't know whether to characterize them as large
20 storage containers or small tanks, but they are in the
21 area either in or immediately adjacent to the drum
22 storage area. They appear, and this is based on my
23 opinion, but they appeared to have some kind of either
24 oil based or asphalt based waste or substance in them,
25 and the photos were taken simply to note that the

1 containers were not sound. I did not at the time make a
2 judgment as to whether or not those containers contained
3 hazardous waste.

4 Q I'd like to ask you one question about that inspection
5 report that you've been referring to earlier. Did you
6 provide a copy of that to the Defendants after your
7 inspection?

8 A Yes. Yes, I did. Or I should say we did. Mr. McPhee
9 and I met with Mr. Hjersted and I believe Mr. Keiser was
10 at that meeting also, and I think we met sometime in
11 July of 1983. We gave him a copy of the report at that
12 time.

13 Q Did you discuss the violations that you noted during
14 your testimony here with them?

15 A Yes, I did.

16 Q Did you return to the site recently?

17 A Yes, I did. I went to the site last week, I believe on --
18 I'd have to look at a calendar to be sure. It was last
19 Wednesday, whatever date that was.

20 Q Can you describe what conditions of the site you
21 observed at that time?

22 A Well, at that time the site did look somewhat different
23 than what I remembered it looking in the past.

24 There was the Superfund trailer was on site. Quite
25 a bit of digging had been done around tank 22 so that it

1 looked -- well, the elevation around the tank had been
2 reduced and the material that had been -- that I assume
3 was around the tank had been pushed up so that it was
4 more like either an impoundment or a diked area around
5 the tank. There was some standing water in low spots of
6 that area.

7 The drum storage area looked somewhat different
8 from what I had seen it in the past but not dramatically
9 different. I did not spend a lot of time in the drum
10 storage area as I was more concerned about walking
11 around the perimeter and making general observations.

12 The area around tank 19 had standing water in it.
13 At the time when I observed it in 1983, there was little
14 water in it. You were able to much more clearly see the
15 reddish brown material in that area.

16 So there was more standing water in it.

17 The surface impoundment at the southern corner of
18 the site did look different to me than it had in
19 previous inspections. The most notable difference was
20 that there was a higher dike built up at the northern
21 end of it.

22 Q Can you indicate what area you're referring to again on --

23 A Okay. That would be the area --

24 Q -- Exhibit 35?

25 A On Exhibit 35 that would be the area perpendicular to

1 the railroad tracks or spur that goes through the middle
2 of the facility, and then it would be like along the
3 northeast border of that impoundment. That had been
4 built up probably a couple feet higher than I remember
5 it being at previous inspections.

6 Q Did the shape of the pie-shaped basin look any different
7 than your previous inspections?

8 A Essentially, no.

9 Q What about the off-site basin, did you observe that?

10 A Yes, I did.

11 Q And do you have any opinion as to what you observed at
12 that time? Did that look the same as your previous
13 inspections?

14 A Well, at the previous inspection that particular area
15 was dry, and although there was not any vegetation
16 growing out of it, Mr. Poizel seemed to think that there
17 was really nothing of concern in that area. And we
18 didn't really discuss it at issue. We concentrated more
19 on the area around tank 19 and then the surface
20 impoundment at the corner of the facility, the
21 southern-most corner.

22 Q Getting back to the inspection report actually the July,
23 1983 meeting where you discussed the violations that you
24 noted in the inspection report with Mr. Hjersted, do you
25 recall whether he had made any agreement with you or did

1 he take any -- give you any indication he was going to
2 address those violations at that time?

3 A Well, he -- if I recall correctly, he seemed to indicate
4 that he would take care of some things.

5 Q And --

6 A I don't recall him being explicit as to what exactly he
7 was going to do.

8 Q And can you testify at this time based on your most
9 recent inspection where the violations that you
10 described earlier addressed?

11 A As far as physical violations at the site?

12 Q Yes.

13 A Well, there's a fence now around part of the facility,
14 but it hasn't been completed, so there's still security
15 problems at the site.

16 There are surface impoundments -- the one around
17 tank 19, the pie-shaped basin surface impoundment and
18 there's now an area around tank 20 which has been
19 excavated subsequent to the visit that I made that had
20 standing water in it.

21 And that's brown -- reddish brown sludgy looking
22 material I observed in other parts of the facility, some
23 of that was in there. That's different from before. I
24 was still unable to observe any ground water monitoring
25 wells at the site other than the ones installed by U.S.

1 E.P.A. for C.E.R.C.L.A., and that confirmed what Mr.
2 Hjersted told us in December of 1985 that he hadn't put
3 in wells.

4 The facility -- other than those minor changes, the
5 facility seemed pretty much the same as it had before
6 other than the weather conditions were different.

7 Q Was the condition of tanks and drums and impoundments
8 you described basically unchanged other than --

9 A Well, there's the new dike on that northeastern edge of
10 the surface impoundment of the southern corner of the
11 site. That's different. There's now that area that's
12 been dug out around tank 20, that's different.

13 There is the area that's been dug out around tank
14 22 is different.

15 From what I can see of the containers, I did not
16 observe any open containers when I was there, but I also
17 did not specifically look at containers that closely.

18 There still are a number of containers at the site.

19 Q And one final question on what your observations were
20 most recently. Did any of the impoundments change in
21 size or in appearance between your 1983 inspection and
22 your 1985 inspection? And by impoundments I refer to
23 either the off-site basin or the pie basin or tank 19 or
24 any other depression that you may have noted?

25 A Tank 19 surface impoundment appeared to have more waste

1 in it or there appeared to be more waste in that area
2 that I recall from 1983.

3 The off-site area surface impoundment there
4 appeared to extend farther north than I remember it
5 appearing in 1983. I admit that I do not have specific
6 clear recollections of that area in 1983. As Mr. Poizel
7 had indicated it was really not of any importance, and
8 it didn't appear anywhere in the Part A permit
9 application, but from what I recall, it extends now in
10 the area farther north of where tank 19 is, and I don't
11 remember it extending that far north before.

12 And then the area around tank 22 and tank 20 is
13 just generally different in appearance, and it would be
14 hard for me to say whether there's more or less waste in
15 those areas.

16 Q Did the pie basin look similar between your two
17 inspections?

18 A It looked fairly similar. One question that I had is
19 there's an area in the pie-shaped basin surface
20 impoundment that's near the very northern most corner of
21 it that runs alongside the railroad tracks. That area
22 now is almost level with the railroad track embankment,
23 and I don't recall it being level. I seem to recall
24 there was some differential in height, and I don't know
25 if there's been erosion or something else to change it.

1 I can't -- I could only speculate on why I have a
2 different recollection of it from before.

3 Q Can you explain for the record when you use the term
4 container, what are you referring to?

5 A A container would be something that is a moveable vessel
6 such as, an example would be, a 55 gallon drum or a
7 container that is not affixed to the ground that is used
8 to -- by the definition of the regulations, it would be
9 used to keep waste inside of it.

10 Q How does that differ from a tank?

11 A Well, a tank is affixed. It's not movable.

12 Q And turning to the facility's interim status which we
13 discussed earlier this morning, now, you indicated that
14 the facility had acquired or obtained interim status in
15 1981, and we also discussed briefly that 1984 amendments
16 that set certain new requirements for land disposal
17 facilities. Based on your review of the files, are you
18 familiar with what the current status of the facility's
19 interim status is at this time? You indicated they lost
20 interim status?

21 A They got interim status in 1980.

22 Q How did the 1984 amendments and their failure to certify
23 in compliance with ground water, financial
24 responsibility affect their interim status?

25 A They lost interim status for those units.

1 Q And which units are you referring to?

2 A To any land disposal units on the facility.

3 Q Would they be allowed to continue operating other than
4 land disposal, for example, if they were treating and
5 storing wastes as long as they didn't plan to dispose of
6 that waste?

7 A Yes.

8 Q When the facility closed in December of 1985 or ceased
9 operations, how did that affect its interim status for
10 the remaining operations?

11 A It would not have affected interim status for the
12 remainder of the operation assuming that they -- that
13 nothing in there operation contributed to land disposal.

14 Q What effect did the shutting down of operations have
15 under the regulations?

16 A Well, the cessation of their operations under the
17 regulations triggered the necessity for them to notify
18 the state that they were closing.

19 Q And was there any other obligation then as far as the
20 closure plan?

21 A Well, they should have notified the state that they were
22 closing, and they should have indicated to the state
23 under what closure plan, whether it would be an existant
24 plan already in the custody of the state or under an
25 additional plan. Without such a closure plan, the state

1 wouldn't -- or without such notification, the state
2 wouldn't proceed with its usual activities in reviewing
3 closure plans of closing facilities.

4 Q Okay. Do you recall in November of 1985, did you have
5 any discussions with Mr. Hjersted concerning the loss of
6 interim status or closure of the facility?

7 A Yes, I did. I had one conversation with Mr. Hjersted.
8 I believe it was on November 22nd. He telephoned me at
9 U.S. E.P.A. and wanted to talk about -- I think his
10 reason for calling was to talk about the wells that were
11 installed under the C.E.R.C.L.A. program.

12 Q And do you recall what you discussed with him at that
13 time?

14 A Well, after discussing the wells that were installed for
15 C.E.R.C.L.A., I told him I really had no control over
16 them, and I couldn't give him information on them
17 because I didn't have it myself, and that I did not know
18 whether or not those wells would meet the requirements
19 for R.C.R.A. ground water monitoring.

20 Mr. Hjersted informed me that he was going to be
21 closing down his operation in the next few weeks, that
22 he was still in operation at the time, and that his plan
23 was to stop operating once he had used up his present
24 supply of materials on site.

25 At that time I told him that what he was telling me

1 about sounded like he was closing his facility. And he
2 said he really wasn't closing the facility, that he was
3 just moth-balling it, and that he didn't -- he really
4 hadn't planned on going through closure on the facility.
5 And I told him that he needed to talk to the state and
6 tell them that he's closing, that what he was doing
7 sounded like closure, and that he needed to submit a
8 closure plan to the state for his facility.

9 Q I'd like to ask you if you know whether E.P.A. sent out
10 any type of letter to facilities which I believe were
11 subject to the new 1984 Amendment regarding land
12 disposal facilities?

13 A It's my understanding that U.S. E.P.A. headquarters sent
14 out letters to very nearly all of the facilities with
15 land disposal units prior to the November 8th date. It
16 was a 3007 information request. That's an information
17 request made under the authority of section 3007 of
18 R.C.R.A.

19 And they were sent by headquarters and everyone
20 received essentially the same letter, and it asked for --
21 it talked about loss of interim status; it explained it.
22 It described what steps were necessary to maintain
23 interim status. And then asked for specific information
24 about units at the -- at each facility that would not
25 continue to operate with interim status.

1 Q I'd like to hand you a copy of Plaintiff's Exhibit 37
2 and ask if you can identify?

3 A This is a copy of a letter that we have in our office
4 that was sent to a GMC facility in Warren, Ohio. And
5 it's an example of this generic 3007 information request
6 and letter of explanation that was sent to all the land
7 disposal facilities in the region.

8 Q And that isn't the letter that went to the Conservation
9 Chemical Company?

10 A This is not a copy of the specific letter that went to
11 them.

12 Q But it would contain an attachment which lists the
13 questions which were asked of each facility that that
14 letter would have been sent to?

15 A Yes, it does. Essentially this is a form letter where
16 the facility name and address and I.D. number was typed
17 in at the top, and I don't know if a copy was sent --
18 was kept of every single letter sent or not or just a
19 record of which one's received. I don't know. That was
20 done at headquarters.

21 Q Do you know in your review of the files whether
22 Conservation Chemical Company filed a response to that
23 information request?

24 A Yes, they did.

25 Q I'd like to hand you a copy of what's marked as

1 Plaintiff's Exhibit 38 and ask you to identify that?

2 A Okay. This is a letter that's dated December 5th, 1985
3 that was submitted to the region by Conservation
4 Chemical, and it's signed by Mr. Hjersted. And it's in
5 in response to the loss of interim status, 3007 request.

6 Q Does that indicate whether that facility has any land
7 disposal units subject to that provision of the statute?

8 A Yeah, it does. It refers to -- it refers to figure one,
9 which is a drawing of -- I assume it's the site. It
10 looks very familiar. It's indicated at the bottom
11 corner of the drawing that it was prepared by "Danes and
12 Walsh." And it indicates that in the letter for the
13 question about -- the question reads, "Identify each
14 R.C.R.A. land disposal unit at your facility by stating
15 the common name or identifier used by the facility and
16 process code. Identify the unit on a photocopy of the
17 topographic map attached to your response."

18 And the answer is in the December 5th letter is,
19 "Number one, refer to figure one. Pie basin called
20 surface impoundment in Part A application but later
21 called waste pile. T-19 basin would not drain as T-22
22 basin does. Contained leakage from tank 19. Used as a
23 receptor for surface water contaminated with processed
24 water."

25 So this letter identifies two land disposal units.

1 Q Earlier we discussed the deficiencies you noted and the
2 revised closure plan which was submitted by C.C.C.I. Is
3 it possible for you to briefly summarize what a proper
4 closure plan for this facility has to contain or what it
5 should address based on your knowledge of the site?

6 MR. RUNDIO: Your Honor, let me object, I
7 think the closure plan has to be filled out and
8 certified by somebody qualified. I don't think there's
9 been any basis that she's qualified to say what a
10 closure plan can include. I think she may be qualified
11 to say what the regulations say which is pretty much
12 what she's been parroting all afternoon, plus giving us
13 some opinions what the U.S. E.P.A. thinks it should
14 have. I think in terms of any evidence about what the
15 regulations require of a closure plan to have it's
16 either got to come from the regulations or from someone
17 who's qualified to certify that this is an appropriate
18 closure plan.

19 There are certification requirements by qualified
20 professional engineers in the regulations.

21 I guess I made a number of objections before and
22 figured out that my objection wasn't going to do any
23 good, but I think we are entering into a new area now,
24 so I would like to object to this question on the
25 grounds there is no foundation for it. She's not

1 qualified to answer it.

2 THE COURT: Mr. Sierks?

3 MR. SIERKS: Your Honor, I'd like to ask a
4 couple of questions by way of background then.

5 MR. SIERKS:

6 Q I believe you already testified that you are involved in
7 review of the closure plan, is that true, as part of
8 your enforcement responsibilities?

9 A Yeah, I did a general review of the closure plan.

10 Q And in your position with E.P.A., would you have a role
11 in determining whether the closure plan met all areas at
12 the site based on your knowledge of the site?

13 A Yes, if it related to enforcement matters.

14 Q Rather than trying to lead you, could you describe what
15 would your role be in evaluating a subsequent closure
16 plan received from the site, if you know?

17 A Well, hope -- if they submit a subsequent closure plan
18 it should go to the state, and the state should perform
19 the detailed review that they normally do on a closure
20 plan for a closing facility. My involvement would be
21 more of a review of the plan and also of the state's
22 evaluation of the plan to determine whether or not it
23 addresses our concerns with the facility.

24 Q Does the fact that you're in litigation on this site
25 have any bearing on your role in the review of the

1 closure plan here? Would you be more involved than you
2 would at another site?

3 A Definitely.

4 Q I guess to summarize you will be involved in the review
5 of the closure plan?

6 A Yes.

7 MR. SIERKS: Your Honor, I'd like to be
8 allowed to ask the witness to answer as to her
9 understanding of what the closure plan should consist of
10 at this site.

11 MR. RUNDIO: Your Honor, I have the same
12 objection.

13 THE COURT: All right. Show the objection as
14 being overruled. Once again I believe it goes to the
15 weight and not the admissibility.

16 MR. SIERKS:

17 Q If you can, then the question is, could you summarize
18 based on your understanding of the site and your
19 position with the E.P.A., what you believe the closure
20 plan for the site should address?

21 A Closure plan needs to address all of the areas at the
22 facility where there has been any land disposal of
23 hazardous waste.

24 Those wastes would include wastes coming from the
25 process sump, wastes coming from the cleaning of the --

1 I think earlier they talk about cleaning the filters on
2 the pumps when they transfer materials, that would be a
3 hazardous waste, so anyplace that those wastes went
4 would have to be addressed. There would have to be
5 adequate provisions or sampling analysis to determine
6 the extent and seriousness of the contamination.

7 It would have to be designed systematically so
8 that, for example, in any surface impoundments, it would
9 have to be designed so that a determination could be
10 made about the entire contents of the impoundment not
11 just the top six inches or one foot, for example. There
12 may be additional materials underneath that might have
13 hazardous properties.

14 There are options available to the facility for
15 closure of land disposal units. They can either do what
16 is called a clean closure which would mean removal of
17 all of the hazardous waste on the facility that have
18 been land disposed, or they can leave the waste on site
19 and do a 30 year for closure for monitoring plan.

20 So a determination would have to be made either up
21 front which they prefer to do, or if they wanted to do
22 studies and decide that later, then there would have to
23 be proposals outlined for how they would proceed either
24 way. There also has to be information in the plan that
25 would adequately address removal and decontamination of

1 waste from any of the tanks or containers stored at the
2 site.

3 I think in the letter that Mr. Constantello sent to
4 the facility about the closure plan, a lot of the things
5 I'm talking about now were addressed.

6 Also the facility, one way or the other is going to
7 have to do some ground water monitoring. None has been
8 done for R.C.R.A. purposes at the site and regardless of
9 whether a clean closure is done, ground water monitoring
10 is going to be required for the facility.

11 Those essentially, I think very broadly address the
12 agency's concerns in what gets included in a closure
13 plan.

14 Q I just have a couple more questions. Would wastes that
15 were generated and happen to be present at the site
16 either in storage or disposal prior to November 19th of
17 1980 be addressed in that closure plan?

18 A Any wastes that were stored. Now, when you get into the
19 issue of disposal prior to 1980, then you have to ask
20 the question of whether or not anything was done to
21 manage that disposal area since 1980.

22 Q What in your knowledge does E.P.A. consider management
23 of hazardous wastes, and in particular in reference to
24 surface impoundments or waste piles at the site?

25 A Well, it's E.P.A.'s opinion that if anything was done to

1 physically manage those areas, such as addition or
2 removal of any wastes, or changes to any of the
3 structures which would contain or hold that waste, that
4 would constitute management.

5 I think it's also been argued that, for example,
6 planning for in a closure plan or proposed closure plan
7 for management of those hazardous wastes also would
8 construe management or consist of management.

9 Q Do you know what E.P.A. considers to be disposal,
10 pre-1980 disposal of waste?

11 A It's my understanding that pre-1980 disposal would be
12 any wastes which were placed in the ground which were
13 not managed, and which were notified for under
14 C.E.R.C.L.A.

15 Q If waste was placed in accordance with whatever
16 applicable legal requirements there were in nineteen --
17 before November of 1980, would that be considered
18 pre-1980 waste disposal?

19 A If nothing had been done to manage the area since.

20 Q What about waste that may have been mixed but improperly
21 treated?

22 A Could you --

23 Q Strike that question.

24 MR. SIERKS: Could we have one minute here.
25 I'm almost done.

1 THE COURT: All right. Why don't we take our
2 afternoon break. We'll start off again at 3:30.

3 THE CLERK: All rise.

4 (Short recess.)

5 (The hearing was resumed and the folloiwng
6 proceedings were had, reported as follows:)

7 THE COURT: Briefly before we get started
8 again, I'm going to have a different court reporter
9 tomorrow. As I mentioned at our last status conference,
10 I'm going to ask for proposed findings of fact and
11 conclusions of law. I'm not trying to sell a
12 transcript, but if anybody is interested in the
13 transcript, make arrangements with this court reporter
14 today since you will not see her after today. Even if
15 you want the next couple of days, you can talk to the
16 young lady that will be here.

17 Any way with that, Mr. Sierks, back to you.

18 MR. SIERKS: Your Honor, I don't have any
19 further questions. I'd like to move for the admission
20 of, I think it's Exhibits 32 through 36 at this time, if
21 that's correct, through 38. 32 through 38.

22 MR. RUNDIO: Your Honor, if I could quickly
23 see the Exhibits.

24 THE COURT: Are they all there, Mr. Sierks, or
25 did you put some of them back.

1 MR. SIERKS: I just want to double-check. 32
2 should be the Part B. 33 would be the deficiency
3 letter.

4 I don't see that either.

5 THE COURT: What number are you missing?

6 MR. SIERKS: 33.

7 A 33 which was the letter that Mr. Constantello wrote
8 about the closure plan.

9 MR. SIERKS: We have a extra copy of that.

10 THE COURT: Why don't we start with 32? Mr.
11 Rundio, any objection?

12 MR. RUNDIO: No, Your Honor.

13 THE COURT: Okay. 33 is the letter dealing
14 with the problems with the closure plan, any objection
15 to that one?

16 MR. RUNDIO: No, Your Honor.

17 THE COURT: Show 32 admitted. Show 33
18 admitted.

19 (Whereupon, documents previously marked
20 Plaintiff's Exhibits 32 and 33
were admitted in evidence.)

21 THE COURT: 34 is the first inspection form
22 prepared by this witness on June of '83.

23 MR. RUNDIO: No objection, Your Honor.

24 THE COURT: Show 34 admitted.
25

1 (Whereupon, documents previously marked
2 Plaintiff's Exhibit 34
were admitted in evidence.)

3 THE COURT: 35 is another copy of the diagram,
4 she made some notations on it.

5 MR. RUNDIO: No, Your Honor.

6 THE COURT: Show 35 admitted.

7 (Whereupon, documents previously marked
8 Plaintiff's Exhibit 35
were admitted in evidence.)

9 THE COURT: 36 is the --

10 MR. RUNDIO: 36.

11 THE COURT: -- is the group of photos.

12 MR. RUNDIO: Yes, Your Honor. I have a
13 problem with 36.

14 No, Your Honor, no objection to 36.

15 THE COURT: Show 36, all of the photos
16 admitted.

17 (Whereupon, documents previously marked
18 Plaintiff's Exhibit 36
were admitted in evidence.)

19 THE COURT: 37 is the letter, the 3007,
20 Section 3007 form letter.

21 MR. RUNDIO: No objection, Your Honor.

22 THE COURT: Show 37 admitted.

23 (Whereupon, documents previously marked
24 Plaintiff's Exhibit 37
were admitted in evidence.)

25

1 THE COURT: And 38 is the response from the
2 Defendant dated December 5th of last year.

3 MR. RUNDIO: No objection, Your Honor.

4 THE COURT: 38 admitted.

5 (Whereupon, documents previously marked
6 Plaintiff's Exhibit 38
were admitted in evidence.)

7 THE COURT: Okay. With that, any cross?

8 MR. RUNDIO: Yes, Your Honor.

9 CROSS-EXAMINATION BY:

10 MR. RUNDIO:

11 Q Before I ask you specific questions, I'd like to know,
12 you've indicated today certain ways that the E.P.A.
13 views this site specifically and some other things in
14 general. Are you an official spokesman for the E.P.A.?

15 A I'm a representative of U.S. E.P.A.

16 Q Are your opinions those of U.S. E.P.A. or of Sally
17 Swanson as an individual?

18 A I would say they are those of U.S. E.P.A.

19 Q When you speak are you speaking of what current U.S.
20 E.P.A. policy is?

21 A To my best knowledge.

22 Q I may have this incorrect, if so, I would very much like
23 you to correct me.

24 I wrote down -- I don't know if I have it right --
25 that management meant anything done to a disposal area?

1 A Yes.

2 Q And that's U.S. E.P.A. policy?

3 A Yes.

4 Q I'm going to ask you to read, first I guess I'll ask
5 from the Indiana regulations. The cite is 30IAC4.1-1-7.

6 And since you read a lot into the record before,
7 I'm going to ask you to read in the definition of
8 management.

9 A "Management or hazardous waste management means the
10 systematic control of the collection, source,
11 separation, storage, transportation, processing,
12 treatment, recovery and disposal of hazardous waste."

13 Q I'll give you the code of Federal Regulations, 40 C.F.R.
14 260.10, and ask you to read in also the definition of
15 management.

16 A "Management or hazardous waste management means the
17 systematic control of the collection, source,
18 separation, storage, transportation, processing,
19 treatment, recovery and disposal of hazardous waste."

20 Q Let me get those books out of your way.

21 I might have this wrong, but it sounds to me like
22 U.S. E.P.A. policy on management differs substantially
23 from the definition, but I'm not going to argue that
24 point with you right now.

25 What I want to know is what do you have, you, the

1 U.S. E.P.A. in writing that explains what the U.S.
2 E.P.A.'s policy is on management?

3 A There's a policy document that was prepared by John
4 Skinner who at the time was responsible for -- I can't
5 recall his exact title, but he is in headquarters, and
6 under his signature there is a memo that came out
7 addressing the issue of management at storage and
8 disposal sites.

9 Q Do you reference that document frequently?

10 A Could you define "frequently"?

11 Q More than once a month.

12 A I personally do not reference that document more than
13 once a month.

14 Q Have you -- I should have started off, have you ever
15 looked at that document?

16 A Yes, I have.

17 Q And that document was published when?

18 A Either in 1983 or 1984.

19 Q And circulated how?

20 A Well, I'm sure it was circulated to the regions because
21 Region 5 got a copy of it.

22 Q Are you applying that document in this case?

23 A Yes.

24 Q Who's applying it?

25 A The agency.

1 Q Who in particular?

2 A I'm not sure I understand what you mean.

3 Q Well, who decides how it's applied to this case?

4 MR. SIERKS: Your Honor, I'd like to object.
5 There's -- I believe an area of privilege that involves
6 Governmental decision making process, and well, Mr.
7 Rundio can inquire into what decision was made, the
8 areas of who was involved in decision making, and who
9 may have made recommendations is privileged in order to
10 protect the free exchange of information within the
11 Government. He's getting into that area. I object.
12 That is privileged.

13 THE COURT: Is this a document that's part of
14 the agency policy?

15 A The Skinner memo, yes, it is.

16 THE COURT: Is it something that is
17 promulgated?

18 A I don't believe it was promulgated in the regulations.
19 It was an interpretation. It came about as a response
20 to a question from a region on how to interpret the
21 regulations.

22 THE COURT: Is it something that is considered
23 confidential?

24 A The policy itself, no.

25 THE COURT: Show the objection to be

1 overruled.

2 MR. RUNDIO:

3 Q The basic question was who is applying that document in
4 this case?

5 A Are you asking for like a name of a person?

6 Q Oh, yes.

7 A Myself, Mr. McPhee, others that are involved in
8 discussions on this case.

9 Q All right. What evidence do you have, what facts do you
10 have that the off-site basin was managed after November
11 of 1980?

12 A It's my understanding that -- it's my understanding that
13 there has been some waste added to that from run-off
14 from the impoundment around tank 19 since 1980. And
15 that, that information was provided to us by plant
16 personnel. I did not gain that information directly.

17 Q Can you identify the plant personnel?

18 A It may have been Mr. Poizel, but again I did not have
19 that conversation with him specifically.

20 Q Is it your testimony that Mr. Poizel told somebody in
21 the Government that material went from basin 19 into the
22 off-site basin?

23 MR. SIERKS: Your Honor, I'd like to object to
24 that. That this is a mischaracterization of Miss
25 Swanon's testimony.

1 THE COURT: Objection overruled.

2 A It's my understanding.

3 MR. RUNDIO:

4 Q You have no firsthand knowledge of that?

5 A No, I said I did not have direct knowledge of it.

6 Q Anything else besides this understanding that you've
7 just expressed?

8 A No. I myself do not have direct knowledge of that.

9 Q Let me go on to the pie basin, same group of people
10 applying this policy in this case to the pie basin?

11 A I think there have also been discussions about that
12 specific portion of the facility between myself and
13 representatives of the Indiana State Board of Health;
14 and there have been discussions with others.

15 Q Who's applying the policy?

16 A In this situation, since I'm the lead in technical
17 contact on the case, I would be applying the policy.

18 Q All right. What information do you have that indicates
19 there was a management of the pie basin since November
20 of 1980?

21 A My most recent information would be based on personal
22 observation that I made at the facility last week. That
23 the diking at the northern facing eastern edge of that
24 impoundment has been changed since the last time I
25 viewed the site.

1 Q What else?

2 A Information contained in Part B permit applications
3 which indicated that and also in the Part A which
4 indicated that it was surface impoundment, it contained
5 hazardous waste and information in closure plans
6 submitted as parts of permit applications to U.S. E.P.A.
7 that the facility intended to remove waste from those
8 facilities as part of its closure plan.

9 Q Okay. Do you remember the question? Do you remember
10 the question I just asked?

11 A Who makes decisions?

12 Q No. Information that you have that indicates that the
13 pie basin was managed after November 19th, 1980?

14 A Yes, I just gave you two answers.

15 Q I'm going to start Exhibit 32. Did you testify that
16 there's information in Exhibit 32 responsive to that
17 question?

18 A Yes, I did.

19 Q Can you find it, please?

20 A On page A-7 where it talks about changing the process
21 code from S-O-4 to S-O-3, that they don't want to get a
22 permit for that surface impoundment.

23 Q All right. What is it in there that demonstrates the
24 systematic control of the collection, source,
25 separation, storage, transportation, processing,

1 treatment, recovery and disposal of hazardous waste?
2 Can you be more specific?

3 A I think that this statement kept in context with the
4 other information contained in this application and
5 received previously would indicate that they do not wish
6 to have the facility characterized as a surface
7 impoundment, and that later on in the permit
8 application, they talk about closing that area.

9 Q Yeah, I understand that. Let me go back to the
10 question, okay?

11 A Uh-huh.

12 Q Can you keep that in mind. The question is, what
13 information do you have that shows that the pie basin
14 was managed after November of 1980?

15 A Specifically, I can give you information from the
16 closure plan where they indicate their intent to close
17 that surface impoundment.

18 Q Is that your answer then, an intention to close the pie
19 basin?

20 A Yes, plans to do so.

21 Q Anything else?

22 A I think specifically based on what I've testified so
23 far, those would be the items. The Part B permit
24 application, closure plans and then my observation at
25 the facility last week.

1 Q Well, I'd like to go through these one at a time. We
2 are done with the Part B. There's nothing else in the
3 revised Part B which is Plaintiff's Exhibit 32, there is
4 nothing else in there?

5 A Nothing which I care to bring up, no.

6 Q Well, it doesn't matter if you care to bring it up. If
7 it's responsive to the question, you have an obligation
8 to bring it up. Do you understand that?

9 A Excuse me, Your Honor, I used the wrong word.

10 MR. SIERKS: Your Honor, I object to the tone
11 of the question. If you want to give a witness time to
12 review the Part B application, then at least allow her
13 the time to do that. If you want an instantaneous
14 answer as to whether or not all that information in the
15 Part B is responsive to your question, I would like the
16 record to note that you are not giving her the
17 opportunity to look through it. If you'd like her to
18 take five minutes to do that --

19 MR. RUNDIO: Fine. She can take as long as
20 she needs.

21 THE COURT: She looked through it; she did not
22 indicate she needed more time. The witness is very
23 intelligent. She can answer the questions or raise
24 objections or reservations if she has any.

25 MR. RUNDIO:

1 Q All right. Now, I'm going to ask you to look at 31,
2 which is the first Part B closure plan, and I've got the
3 same question.

4 A I believe Exhibit 31 is the first Part B permit
5 application which was submitted.

6 Q I'm sorry, permit application?

7 A Thank you.

8 In this permit application, there are statements
9 which discuss the existence of the two surface
10 impoundments on site. In other words, the two surface
11 impoundments which the facility acknowledges are on
12 site. There are references to those surface
13 impoundments, and the closure plan contained -- there
14 are drawings of the surface impoundments acknowledging
15 their existence, and the closure plans contained in this
16 permit application address specifically activities that
17 they would feel would be necessary to undertake to close
18 those surface impoundments.

19 Q All right. Anything else?

20 A I would have to sit down and do a detailed review of the
21 Part B permit application. That's based on my present
22 knowledge of what's in the permit application, my
23 answer.

24 Q All right. Let me just go back and here's where we are
25 going on this. The first question was, information

1 which indicates that the pie basin was managed, and we
2 now know what the definition of management is after
3 November of 1980?

4 A Uh-huh.

5 Q Your answer was there's information in Part B permit
6 applications.

7 A Yes.

8 Q Your answer also was there was a personal observation.

9 A Yes.

10 Q And I let that go for now. And I'm going on to Part B
11 permit applications. We have gone through the first
12 one, which is the most recent one which is the revised.

13 Okay. And I've asked you to tell me in there what
14 it is that caused you to answer the way you did, and I
15 think you did.

16 A Uh-huh.

17 Q Now, there is something in Exhibit 31 which is the
18 original Part B application which caused you to answer
19 the way you did?

20 A Uh-huh.

21 Q Have you told me what that is?

22 A The two drawings that I mentioned.

23 Q You don't have to repeat it. You just have to tell me
24 if you told me everything that was in there?

25 A I believe I summarized what was in there, yes.

1 Q Are you aware of anything else that's in there?

2 A I'm not aware at this time of anything else.

3 Q I'm going to ask you to look at these Exhibits 28, 29
4 and 30. Is there anything in there which is responsive
5 to my question?

6 A Not directly since these documents were prepared prior
7 to the date in question. As I understand it you're
8 asking me about after November 19th, 1980, is that
9 correct?

10 Q That's right. That's right. So there is nothing in 28,
11 29 or 30, correct?

12 A Based on the way you worded your question, yes.

13 Q Is there anything in 28, 29 and 30 which is responsive
14 to my question?

15 A There's information in these Exhibits in question,
16 specifically 29 and 30, and that is information that the
17 facility provided to U.S. E.P.A. stating that the
18 facility consisted of specific activities.

19 Exhibit 30 consists of a letter that Mr. Hjersted
20 sent to us, stating that there is at least a surface
21 impoundment on the facility, and he was notifying us of
22 that fact, that he was managing hazardous waste in a
23 surface impoundment in that facility. Thereafter we
24 based our activities, our assessments, our evaluation of
25 any information concerning this facility on Mr.

1 Hjersted's information, him telling us, "I have this
2 surface impoundment on the facility."

3 Q Did you understand the surface impoundment referred to
4 in 29 and 30 is what is known as the pie basin?

5 A Based on the location in the facility sketch I would
6 assume that's the one that he means.

7 Q Anything else in 28, 29 or 30?

8 A Not to my knowledge.

9 Q Now, what did you observe again?

10 A On which date?

11 Q You indicated that one of the elements that you felt
12 showed that the pie basin was managed after November of
13 1980 was a personal observation?

14 A Yes. When I was at the facility last week, I observed
15 that the earthen dike that runs along the northern
16 corner, in other words, facing east of that basin had
17 been added to or raised.

18 There was additional material, and it was higher
19 than it had been previous site visits.

20 Q All right. That's it?

21 A That's the direct observation.

22 Q But that's all you observed?

23 A Personally, yes.

24 Q You didn't observe anything in the basin?

25 A No, the basin's full.

1 Q You didn't observe any change in the basin?

2 A Well, it's -- it's wetter than it had been in 1983.

3 There wasn't snow on it like there had been in 1984.

4 Q Do either of those indicate that there was a management
5 of the basin since November of 1980?

6 A Physical management, I assume you're asking?

7 Q Oh, no. I'm asking for management within the
8 definition.

9 A Based on my direct observation, that would be --
10 observing the change in the dike would be a direct
11 observation of management in the basin.

12 Q That's all though. That's the only direct observation?

13 A Of my own, yes.

14 Q What about observations of anybody else?

15 A Referring specifically to the surface impoundment?

16 Q To the pie basin.

17 A Marked pie basin. I don't recall direct conversations
18 with others where they stated that they had seen or made
19 changes to it.

20 Q All right. Is your answer there is nothing else?

21 A To my knowledge. It may exist elsewhere but you're
22 asking about my knowledge.

23 Q Well, I'm asking about the U.S. E.P.A.'s knowledge?

24 A Okay. I apologize. I was unclear because before you
25 were asking me for specific names of who was doing what.

1 Q Right.

2 A And now you're not.

3 Q Well, I guess -- I guess we maybe lost the predicate for
4 my question, the basis for the U.S. E.P.A.'s position,
5 if you will, that the pie basin was managed after
6 November of 1980?

7 A The basis for that has been information on the Part B
8 permit application and information in the closure plans.

9 Q And the observation you just testified to?

10 A Yes, that also would be a contributor.

11 Q Anything else?

12 A No. I think the agency has felt that information --

13 Q Hold it. Hold it. Hold it. You can talk when he asks
14 you questions, but when I ask you a question, I would
15 like a straight answer.

16 A Please repeat your question.

17 Q Is your answer no -- pardon me.

18 A Please repeat your question.

19 Q You've already testified as to what the agency knows --

20 A Uh-huh.

21 Q -- or has information about that indicates management of
22 the pie basin since November of 1980?

23 And we have been through two Part B applications,
24 some part-A applications and your observation. I want
25 to know if there is anything else?

1 A Not to my knowledge.

2 Q The area called the A.P.I. separator --

3 A Uh-huh.

4 Q -- I'll ask the question, the same question, but so it's
5 clear, I'll ask it again.

6 Agency's point of view, what information is there
7 that shows that that area was managed since November of
8 1980?

9 A I don't know that the question of management would apply
10 to a tank in the same way that it -- I'm not sure if I
11 understand your question. It's managed in that waste
12 has been stored in that tank.

13 Q Is that the answer?

14 A Yes.

15 Q Anything else?

16 A No.

17 Q What waste was stored in that tank?

18 A Well, I don't know that the Part A permit application
19 was specific as to what is in that tank since it was
20 included as part of the Part A permit application and
21 included with the storage capacity of the facility. I
22 think it was covered under that.

23 Q Let me get Part A again

24 Q I'm going to give you all three of these part A's.

25 Can you show me where in any one of them?

1 A All right. I made an error. I had assumed that that
2 particular tank was included on the site drawing in the
3 Part A, and it was not. So, I made an error.

4 Q So your answer -- your reference to the Part A was
5 simply wrong?

6 A It was incorrect, yes.

7 Q So we will strike that from your answer so to speak, and
8 let me ask you if there's anything else?

9 A Anything else what?

10 Q Anything else that in the U.S. E.P.A.'s view consisted
11 of management of the A.P.I. separator since November of
12 1980?

13 A There are materials or wastes stored in that particular
14 tank which came from another or were pumped into that
15 tank previous to 1980, and have been stored since there.

16 It's the agency's interpretation of the regulations
17 that storage after 1980 of hazardous wastes is regulated
18 activity.

19 Q What is the waste in the A.P.I. separator?

20 A I believe it was sludges that came out of tank 20.

21 Q What's the basis of that belief?

22 A If I recall, during the inspection in 1983, we asked Mr.
23 Poizel what was in the -- in that particular tank, and
24 he said that it was sludges and possibly oils from the
25 refinery. He was not real specific.

1 Q He didn't tell you what kind of sludges?

2 A I don't recall.

3 Q Do you recall anything else of that conversation?

4 A About the A.P.I. separator box?

5 Q Yes.

6 A That the freeboard on that tank was not adequate.

7 Q The question was, do you recall anything else about that
8 conversation?

9 A In that conversation, we discussed the freeboard of that
10 tank, and I informed Mr. Poizel that the freeboard on
11 the tank was not adequate.

12 Q Anything else about the contents of the tank?

13 A Not to my recollection at this time.

14 Q Does the agency conclude that there's hazardous waste in
15 the A.P.I. separator?

16 A Yes, I think we do.

17 Q What's the basis of the conclusion?

18 A Excuse me. I think that based on the information that
19 we gathered during the inspection in 1983, that has been
20 our belief.

21 Q Anything else?

22 A Information in the Part B permit application which
23 indicates that there is waste in the pit or in the
24 separator box.

25 Q Which Part B?

1 A I believe it was in the first one.

2 Q Can you find that for me, please?

3 A I'm sorry that it's taking me time to look through this.
4 It's been a while since I read this document. I found a
5 reference to that on page G-2

6 Q Okay. This is in -- just so we can find it now, Exhibit
7 31?

8 A Yes. And --

9 Q Is what G-2?

10 A G-2, and what it states is not what I had in my memory
11 from reading it before. It states that, "The facility
12 has oil separator which is marked as pit in the diagram
13 which is 12 feet by 50 feet by 20 feet. We never used
14 this pit for any purpose. Material in it is mainly from
15 the rainfall and from the company's prior years'
16 activity."

17 So that was different from what I had remembered.

18 Q All right.

19 A Okay.

20 Q Are you finished going through Plaintiff's Exhibit 31?

21 A For this time, yes.

22 Q Well, is there anything else in Plaintiff's Exhibit 31
23 that leads the agency to believe that material in the
24 A.P.I. separator is hazardous waste?

25 A Not to my knowledge.

1 Q How about going to Exhibit 32, anything in there?

2 A Okay. Part B permit application talks about -- in the
3 closure plan it talks about a closure plan for the oil
4 separator. And --

5 Q I'm sorry, what page?

6 A Oh, I'm sorry, page I-21, and it puts it in the future
7 tense that it will be used as a holding tank. So, in
8 the closure plan, it talks about -- I'm assuming future
9 use.

10 Q All right. But there's nothing on I-21 that indicates
11 that the material in the A.P.I. separator is a hazardous
12 waste, is that correct?

13 A That's correct.

14 Q Anything else in Plaintiff's Exhibit 32?

15 A Not to my knowledge.

16 Q Let me move on to something else.

17 I've -- I certainly haven't reviewed the different
18 Part A's, and the modifications, and the first Part B,
19 and the revised Part B, anywhere near in the detail that
20 you have, but my review has indicated there is nothing
21 in there about leaks, is that surprising?

22 A Is that surprising? No.

23 Q All right. And I take it it's not surprising because
24 the E.P.A. realizes that facilities that are storing
25 particularly liquids are going to have leaks?

1 A Partly.

2 Q Right. You're familiar with E.P.A.'s regulations Part
3 265.

4 A Yes.

5 Q And part of which you have to do under 265 is to prepare
6 sort of a facility plan for the unexpected, is that
7 correct?

8 A Yes, under preparedness and preventiveness.

9 Q In fact if appropriate that plan should address what to
10 do in case something leaks?

11 A Yes.

12 Q You don't need to have a special portion of your permit
13 to sort of authorize you to have leaks, is that the
14 idea?

15 A No.

16 Q You mean you have to provide in your permit for leaks?

17 A You have to provide in your permit measures that will be
18 used to prevent or control them if they do occur.

19 Q And is that all that dissimilar from the Part 265
20 requirement to have a preparedness plan?

21 A No, it is not that dissimilar.

22 Q And I guess what I'm -- the point I'm getting to is the
23 regulations contemplate materials leaking, would you say
24 that's a fair statement?

25 A Yes.

1 Q All right. And would you say that when a leak occurs,
2 it is not a violation of the regulations?

3 A At the instant that the leak occurs?

4 Q Right.

5 A No.

6 Q Now, I understand that you answered at the instant the
7 leak occurs; and perhaps later on there could be a
8 violation of the regulations?

9 A That's correct.

10 Q Let me ask you then about leaks onto ground?

11 A Uh-huh.

12 Q Simply because the material leaks onto the ground, is
13 that a violation?

14 A That would depend on how long it was allowed to remain
15 on the ground.

16 Q And what's the time limit?

17 A I believe that regulations require that when a spill
18 occurs that immediate steps be taken for a clean up or
19 removal. So, I would assume that in a real world
20 situation if something wasn't done that day to begin
21 addressing the spill or wasn't done in the immediate few
22 days after the spill to remedy it, that that would be a
23 violation.

24 Q And what would be the violation?

25 A The violation would be failure to implement emergency

1 contingency plan, and the violation also would be for
2 disposal of hazardous waste.

3 Q Disposal of hazardous waste on land?

4 A Yes.

5 Q All right. Would the spot where the leak dripped down
6 to the soil be a land disposal unit?

7 A Technically if it were allowed to remain, it could be
8 construed in that way.

9 Q As a land disposal unit, right?

10 A (Witness nods head).

11 Q Now, I'm not sure what a land --

12 THE COURT: Just answer out loud, please.

13 A I'm sorry. Yes, it could.

14 MR. RUNDIO:

15 Q I'm not sure what a land disposal unit is, and I'm going
16 to ask you a little bit later. But as I understand it,
17 if a land disposal unit didn't have ground water
18 monitoring, a Part B application and financial
19 requirements met by November of 1980, it lost interim
20 status. I'm sorry, 1985, it lost interim status?

21 A Uh-huh, yes.

22 Q And that would be true for a leaked area?

23 A If there was a specific area where spills had occurred
24 and had not been cleaned up, then I would imagine a
25 determination would need to be made as to what type of

1 land disposal unit it was. And yes, that portion of the
2 facility for lack of a better phrase would have lost
3 interim status on November 8th if they didn't certify,
4 uh-huh.

5 Q What is a land disposal unit?

6 A It could be a land-fill, or a surface impoundment, or a
7 waste pile, or an underground injection control well.

8 Q All right. Now is that by U.S. E.P.A. policy?

9 A Yes.

10 Q Pardon me.

11 A Yes.

12 Q That's not by a regulatory definition?

13 A Statutory.

14 Q Statutory definition.

15 Is there a parallel U.S. E.P.A. regulation?

16 A To my knowledge those regulations have not been finally
17 promulgated yet. It's operative in the statute.

18 Q So, if we want to know what a land disposal unit is we
19 have to reference back to the statute?

20 A I believe so.

21 Q Is there any U.S. E.P.A. policy on what a land disposal
22 unit is?

23 A A specific written document?

24 Q That's right, yes.

25 A I believe that some of the documents that were generated

1 around the time that the loss of interim status
2 provisions went into effect, specifically enforcement of
3 loss of interim status provisions, I believe that
4 addressed that.

5 Q Those are again U.S. E.P.A. policy documents?

6 A Yes.

7 Q They have been published, I guess, circulated?

8 A They are available, yes.

9 Q But they haven't been promulgated as a regulation?

10 A To my knowledge, no.

11 Q Internal U.S. E.P.A. guidance?

12 A Yes.

13 MR. SIERKS: Your Honor, just for the record,
14 I think you can take judicial notice, we do not have the
15 Federal Register cite but there was a Federal Register
16 notice published on September 25, 1985 which addresses
17 precisely that area of inquiry.

18 As a matter of fact we have a copy of it here if
19 you would like to look at it in your question. The
20 Federal Register cite is 50, Federal Register 38946.

21 THE COURT: What was that, 50?

22 MR. SIERKS: 50, 38946.

23 MR. RUNDIO:

24 Q Maybe that will straighten out some of this area here.

25 What would you call a flat area of soil that a leak had

1 occurred on, but had not been cleaned up promptly in
2 terms of a land disposal unit? How would you classify
3 it?

4 A Probably the closest to a definition contained in the
5 regulations would be land-fill.

6 Q A land-fill.

7 I want to go to briefly reference their Plaintiff's
8 Exhibit 32. I think you had testified, and you may
9 correct me if I'm wrong please, that you have inspected
10 some 60 sites?

11 A No, I did not testify that I inspected 60 sites.

12 Q You made a reference to 60 sites, and I didn't get the
13 reference?

14 A The reference was that I am familiar with more than
15 just, you know, superficial information with 60 sites,
16 and I have worked with them in various capacities.

17 Q And these would have been interim status sites?

18 A Many of them. Some of them also would have been
19 generator or transporter handlers.

20 Q Of the interim status sites have any of them been issued
21 a Part B?

22 A To my knowledge, I have not inspected the facility which
23 has a Part B permit application issued. Unless perhaps
24 one of the Eli Lilly facilities which I inspected last
25 year has subsequently had a permit issued. I don't know

1 if it did or not.

2 Q What I was going to then ask you then, how many sites in
3 your experience have had a Part B permit issued; and I
4 guess your answer is maybe one, Eli Lilly?

5 A How many facilities that I'm familiar with that have
6 final permits issued?

7 Q Right.

8 A Possibly one Eli Lilly facility.

9 Q How many facilities that you're familiar with -- let me
10 use the word passed, passed the completeness review in
11 their initial Part B application?

12 A I have not been directly involved with the permit
13 process in many facilities. If I'm involved in
14 enforcement in a case where a Part B has been submitted,
15 I will have some direct knowledge about that. I can
16 tell you generally what the experience has been at the
17 agency as I know it with Part B permit application
18 submittals.

19 Q The ones you're familiar with?

20 A The ones I'm familiar with.

21 Q Right. I understand that?

22 A Generally the first submittal is not complete.

23 Q Once you get a complete submittal, how many of them have
24 no technical deficiencies?

25 A I would -- I don't have direct knowledge of any that

1 have technical --

2 Q That have no technical deficiencies?

3 A That is very common.

4 Q Very fine. And I guess that's the point. The company
5 here submitted a Part B application and was reviewed
6 after how many months, and they took awhile, and they
7 said it was incomplete?

8 A Uh-huh.

9 Q They then submitted a second, and that's not out of the
10 ordinary, is the point, is that correct?

11 A No.

12 Q Then they submitted a second revised, let's call it,
13 Part B application. That was submitted in the normal
14 course of events I know that it takes awhile to look at
15 these things. That was reviewed and there was some
16 technical deficiencies?

17 A Completeness deficiencies. It has not yet been reviewed
18 for technical.

19 Q There are additional completeness deficiencies?

20 A Yes.

21 Q Those haven't been communicated?

22 A No.

23 Q What you communicated was sort of a -- and I don't mean
24 to mischaracterize your efforts, was sort of a broad
25 bush review of the closure plan in the second one?

1 A I did review that closure plan, yes.

2 Q That was from a technical point of view?

3 A From an enforcement point of view as opposed to the
4 permit site.

5 Q Okay. Let's move on.

6 You testified about a recycling exemption, and I
7 believe it was a recycling exemption for pickle liquor,
8 and you indicated that it does not apply to leaks and
9 spills. Does that non-applicability -- is that a policy
10 of the U.S. E.P.A.?

11 A No, it's a regulation of the U.S. E.P.A. that any
12 material -- any material which is intended or --
13 intended to be discarded or discarded if it meets
14 whatever criteria as a solid waste as a hazardous waste
15 then it's disposed and it's a hazardous waste or
16 discarded.

17 Q Maybe I didn't ask the question very articulately, I
18 apologize. Was your statement based on anything other
19 than the regulations?

20 A It was also based on -- no, I would say it's based on
21 the regulation.

22 Q I'm looking for some other internal writing, some other
23 ad hoc policy, is there such a thing?

24 A If there is, I didn't use it in discussing exemptions
25 for recycling.

1 Q If there is one, you are unaware of it?

2 A Yes.

3 Q Are you aware of any State of Indiana internal guidance
4 document on the issue?

5 A No.

6 Q You also commented on an exemption for pickle liquor
7 sludge, and I think that's a regulatory exemption for
8 lime, neutralized pickle liquor sludge, is that right?

9 A Lime stablized pickle liquor sludge.

10 Q Tongue twister.

11 A Yes.

12 Q Now your testimony on that, was that related to the
13 regulations only?

14 A Yes.

15 Q There is no written policy document, no internal U.S.
16 E.P.A. guidance on that point?

17 A No, that was based on what appeared in the Federal
18 Register, both in 1980; and then subsequently, I believe
19 in 1984, there was a notice published in the Federal
20 Register that explained the exemption given to the iron
21 and steel finishing industry specifically. So, it would
22 be Federal Register notice and in the regulations.

23 Q All right. You're not aware of any internal agency
24 guideline that's been applied to that?

25 A No.

1 Q Then I think I may have misunderstood. I may be
2 misinformed on this point.

3 I understand the exemption for treatment of pickle
4 liquor for use in water treatment applications like the
5 company did. I understand the one we just went to which
6 I think is a sludge exemption. Did I understand you to
7 say that there is an exemption for the pickle liquor
8 itself if it comes from the iron and steel finishing
9 industry?

10 A There is an exemption for the pickle liquor waste --
11 there is an exemption for lime stabilized spent pickle
12 liquor coming directly from the iron and steel finishing
13 industry.

14 Q All right. And now -- okay.

15 Where can I find that exemption? Is that
16 regulatory exemption?

17 A Yes.

18 Q That's not a delisting?

19 MR. SIERKS: Your Honor, I guess in order for
20 the witness to answer that, we have a copy of the
21 Federal Register Notice referred to, the 1980 and the
22 1984. Of course, the underlinings are mine on the 1980.

23 MR. RUNDIO: Maybe if I can look at this, I'll
24 get my question straightened out here.

25 Well, maybe I can -- sorry, let me move it along.

1 Q Whatever the exemptions are or the delistings, you based
2 your testimony on either the regulation, the Federal
3 Notice, Federal Register Notice or if there is a
4 delisting petition granted I guess on that petition?
5 There isn't an internal agency policy guideline on any
6 of these, is that correct?

7 A To my knowledge that's correct.

8 Q Let me write these down. Let's move on.

9 All right. I believe you indicated it was part of
10 your duties in the area of enforcement to determine
11 either in a particular case or in this case whether a
12 configuration is a waste pile or a surface impoundment,
13 is that part of your duties?

14 A Yes.

15 Q All right. What do you use in the performance of that
16 duty?

17 A I would use information provided by the facility. I
18 would use information contained in our compliance files.
19 I would use information provided to me by either a state
20 or Federal permit writer.

21 Q Is there any internal policy or any internal guidance on
22 that?

23 A On how to make such a determination?

24 Q That's right.

25 A No, I think it's general office procedures to evaluate

1 available information to make those kinds of decisions.

2 Q And do you use anything in terms of policy or guidance
3 other than the regulations?

4 A In determining the difference between a waste pile and a
5 surface impoundment?

6 Q Right.

7 A I don't believe so.

8 Q What about whether or not a particular facility is a
9 waste pile or a surface impoundment?

10 A I'm not sure I understand your question.

11 Q All right. You indicated where you get sources of
12 information to make your determination, I understand
13 that; but I want to know what you apply those sources of
14 information against, and I think we've established at
15 least the difference between a waste pile and a surface
16 impoundment you use the regulations and nothing else.

17 My question is in determining whether it is a
18 particular facility as a waste pile, do you use anything
19 other than the regulations?

20 A I don't believe there are other criteria.

21 Q All right. Same question on surface impoundment?

22 A I don't believe there are any other criteria.

23 Q I'm just trying to find out whether the E.P.A. is using
24 something other than what we have available to us, the
25 regulations?

- 1 A Uh-huh.
- 2 Q And I guess your answer is no?
- 3 A No.
- 4 Q I understand we can differ?
- 5 A Uh-huh.
- 6 Q But I just want to find out sort of what the rules are
- 7 that you're playing by.
- 8 All right. Now, you indicated that you thought
- 9 that the area around tank 20 meets the definition of a
- 10 surface impoundment, correct?
- 11 A At this time, yes.
- 12 Q All right. At this time.
- 13 By surface impoundment, you mean what's defined in
- 14 the regulations?
- 15 A Yes.
- 16 Q No other definition for surface impoundment comes into
- 17 play?
- 18 A No.
- 19 Q All right. What is the basis then in fact for your
- 20 determination or your belief that it is a surface
- 21 impoundment?
- 22 A Because it is an artificially constructed depression, in
- 23 other words the bottom is lower than the sides, and
- 24 lower than grade, and it's used for holding hazardous
- 25 waste.

1 Q All right. Now, what's the basis for your saying that
2 it's holding hazardous waste?

3 A Materials from tank 20 had leaked into that area, and
4 also materials from the area -- the surface impoundment
5 around tank 19 had been placed in that impoundment at
6 one time or actually had been placed in the tank at one
7 time, and would have leaked into that area.

8 Q All right. When were the -- when was the material from
9 tank 20 put in the area?

10 A It's my understanding that that occurred last fall.

11 Q This was the leak from tank 20 that was testified to
12 previously?

13 A Yes.

14 Q That's the only thing you know about?

15 A Yeah. I didn't really know about a surface impoundment
16 around tank 20 until the last few months.

17 Q I understand.

18 A Yeah.

19 Q And then what was this -- you had mentioned about
20 material from basin 19 being put into the area around
21 tank 20. When did that occur?

22 A Well, it's my understanding that it was put into tank
23 20, and then it leaked from tank 20 into the area around
24 it. It's my understanding.

25 Q So you understand that material was taken out of basin

1 19 and put into tank 20?

2 A (Witness nods head).

3 Q When did this occur?

4 MR. SIERKS: Excuse me, Your Honor. For the
5 record I don't know if the witness had an audible answer
6 to that last question.

7 MR. RUNDIO: You're right.

8 THE COURT: Answer out loud, please.

9 A I'm sorry. Yes.

10 MR. RUNDIO:

11 Q When did this occur?

12 A I believe in November of 1985.

13 Q Was this the same incident we just talked about? Are we
14 talking about the same material here?

15 A Yes.

16 Q So, we're talking about, let's call it a single
17 incident, although I guess it may have occurred over a
18 period of time?

19 A Yes.

20 Q With material being put into tank 20 sometime in October
21 or November of '85 and then tank 20 leaking, is that the
22 basis?

23 A Yes.

24 Q And it's your understanding that the material that was
25 put into tank 20 was material that was taken out of

1 basin 19?

2 A That's my understanding, yes.

3 Q And you believe that material is hazardous?

4 A Yes.

5 Q Why?

6 A Because it was material that had originally been in the
7 process sump and had been put into surface impoundment
8 around tank 19.

9 Q Any other basis to support your belief that the area
10 around tank 20 is a surface impoundment?

11 A Well, it's based on listed waste go into the process
12 sump, and it points in time -- the contents of the
13 process sump or portions of the process sump have been
14 placed into the area around tank 19, and then last fall
15 were moved into tank 20 and subsequently leaked. And
16 that would have involved listed hazardous waste.

17 Q What was the listed hazardous waste?

18 A Spent pickle liquor.

19 Q The Exhibit 34 is your inspection report from. I think,
20 July, 1983, is that correct?

21 A Yes.

22 Q Can we dig that out, please. I have a question or two.
23 Let's go to page B-1, and I think we can straighten this
24 out quickly. You indicated that you wrote some
25 information while you were on the site, and then you

1 went back to your office and wrote some more
2 information?

3 A Uh-huh.

4 Q It looks to me like there's at least two different
5 colored ink or two different colored pens, but is all
6 that handwriting yours?

7 A Yes. All the handwriting on this page is mine.

8 Q All right. Go to G-1. That's post closure, and there's
9 a line through there. No information is written in.
10 Why is the line through there?

11 A There were -- there was no provisions for post closure
12 care available at the time.

13 Q I'm sorry. I don't think I understand it. Was there a
14 requirement that there be a post closure plan?

15 A At the time -- okay. There would have been a
16 requirement for a post closure care plan at that time if
17 in the closure plan there had been a statement that
18 waste would be left on site in land disposal units.

19 Q But I take it that there wasn't, and this simply wasn't
20 applicable?

21 A At that time based on a cursory review of the closure
22 plan, yes, that was my --

23 Q So you struck it out?

24 A Yes.

25 Q You indicated that you originally drew a line -- going

1 to K-1 you originally drew a line through there?

2 A Yes.

3 Q And you filled that out?

4 A Yeah.

5 Q Why did you draw the line through there in the first
6 place?

7 A I don't recall at this time.

8 Q Well, was it -- did you think there weren't any surface
9 impoundments at the facility?

10 A No. I thought that there were surface impoundments at
11 the facility.

12 Q Did you think that hazardous wastes were being stored in
13 surface impoundments at the facility?

14 A Yes.

15 Q Go to page A-1. Look about halfway down the page.

16 There's an indication of storage and surface
17 impoundments.

18 A Uh-huh.

19 Q Now, I see some of the others are checked, but that one
20 isn't checked.

21 Was there storage in tanks on site?

22 A Yes.

23 Q Storage in containers?

24 A Yes, that is checked.

25 Q All right. Storage -- treatment in tanks is checked

1 too?

2 A Yes.

3 Q But storage in surface impoundments isn't?

4 A No.

5 Q I'm going to move on to something else now, and I think
6 I can cover this next one real brief.

7 You don't consider yourself a chemist, I take it?

8 A No.

9 Q You indicated that cyanide waste was reactive. What
10 does that mean?

11 A It means that under certain circumstances, this is my
12 understanding, under certain circumstances if it's
13 combined with other substances with which it could
14 react, it would -- well, it would react.

15 Q Did you understand that there was a reactivity danger at
16 the company's location?

17 A Yes.

18 Q Based on what?

19 A Based on reviewing the Part A permit application and
20 noting that at F-0-0-7, F-0-0-8 and F-0-0-9 were
21 indicated in fairly large quantities on that.

22 Q Those are cyanide bearing wastes?

23 A Yes. I also was told by someone who had been at the
24 facility in 1980 that there was lot of cyanide on the
25 facility, and that he was not comfortable with the

1 appearance of the tanks and wondered about their
2 integrity.

3 Q But you need something else to make cyanide reactive?

4 A Yes.

5 Q You're not aware of the cyanide reacting out there at
6 all?

7 A As long as it stays in the tanks and doesn't come into
8 contact with something that would cause it to react, it
9 won't react.

10 Q I guess what I'm asking, do you know if the something
11 that causes it to react is at the company's location?

12 A Yes.

13 Q What is it?

14 A At the time it would have been hydrofluoric acid. It
15 could react with spent pickle liquor which is highly
16 acidic. So, there were substances at the site that
17 could cause the cyanide to react.

18 Q You're not aware of any incident where it happened
19 though?

20 A No.

21 Q Let's go on again to -- well, we established you're not
22 a chemist. You're not a chemical engineer, I take it
23 either?

24 A No.

25 Q Somewhere along the line though, you concluded that a

1 waste sludge was produced in the company's ferric
2 chloride manufacturing process?

3 A Yes.

4 Q That was your opinion?

5 A That was my opinion and that was also based on
6 discussions with other technical people at the office
7 that are more familiar with that specific process.

8 Q More familiar with what process?

9 A Well, anything that involves recycling of spent pickle
10 liquor and manufacturing of that particular product, the
11 ferri -- ferric chloride.

12 Q Ferric chloride?

13 A Ferric chloride.

14 Q You're in the courtroom today, you heard Don Grimmett
15 testify, correct?

16 A Yes, I heard him this morning.

17 Q He testified that there simply wasn't sludge removed
18 from the sump pump, sump area, correct?

19 A No. I think the closest thing to that would have been
20 his testimony that at times they tried to agitate the
21 sludges at the bottom and get them to suspend in
22 solution in the liquid that was in the sump.

23 Q All right. But he testified that the sump was cleaned
24 out once in the '70s?

25 A Uh-huh.

1 Q And then again more recently and put on a prepared area?

2 A Yes.

3 Q You don't have any information to the contrary to that?

4 A No.

5 Q You testified over objection as to what should go in a
6 closure plan for the facility. And I believe you
7 indicated that there should be some sampling and
8 analysis that was or was not adequately, and some
9 systematic sampling of materials.

10 Now is that E.P.A. policy?

11 A That's E.P.A.'s interpretation of the performance
12 standard contained in the closure requirements.

13 Q E.P.A. interpretation of a regulation?

14 A Yes.

15 Q Was that written down somewhere?

16 A In the letter that Mr. Constantello sent to Mr.
17 Hjersted.

18 Q All right. Well, where did Mr. Constantello get that
19 information from?

20 A From me.

21 Q All right. Where do you get the information from?

22 A I would say based on knowledge of the closure
23 requirements, information contained in the plan,
24 knowledge of the site, and familiarity with -- what do I
25 want to say -- familiarity with some of the guidance

1 documents and other, like perhaps the contract report on
2 evaluating or preparing closure plans, that would have
3 been a sort of an in-house training on looking at
4 closure plans.

5 Q Is this written down somewhere? Do you sort of make it
6 up as you go along?

7 A The procedures for evaluating closure plan?

8 Q No. The information that you said has to be in the
9 closure plan to be prepared for this site?

10 A I don't believe it's written down anywhere. I think
11 that's been discussed as the approach for reviewing
12 closure plan.

13 Q You said that the company's site has to be ground water
14 monitored, and I think you said in all events. What's
15 the basis for that statement?

16 A There have been surface impoundments on site and that
17 the facility has never done ground water monitoring as
18 required by the regulations.

19 Q All right. And if there are no surface impoundments is
20 it required to do ground water monitoring?

21 A If there are no surface impoundments, ground water
22 monitoring -- okay, you're -- okay, if there are no
23 surface impoundments and looking at that strictly,
24 ground water monitoring would not be required.

25 Q So, it's the existence of a surface impoundment that

1 would bring into play a ground water monitoring
2 requirement?

3 A Or if there was say disposal in a land-fill.

4 Q All right. Or disposal in a land-fill?

5 A Yes.

6 Q But if there wasn't disposal in the land-fill or surface
7 impoundment there wouldn't be a ground water monitoring?

8 A Not strictly in the regulations.

9 Q Let me focus in now on the area around tank 22. Oh, I'm
10 sorry, before I go -- you indicated that you're familiar
11 with R.C.R.A. regulations. Are you familiar with Clean
12 Water Act Regulations?

13 A A little but not extensively.

14 Q What about regulations requiring containment areas for
15 oil storage, are you familiar with those regulations?

16 A S.P.C.C. requirements?

17 Q Yes.

18 A I have a knowledge of their existence. I don't know the
19 regulations themselves.

20 Q All right. We'll pass. I'm going to ask you now the
21 same question for the area around tank 22 that I asked
22 when I started examining you awhile back.

23 What is it to the agency's mind that constitutes
24 management of the tank 22 area basin after November of
25 1980?

1 A Recent excavation in that area.

2 Q Anything else?

3 A Not to my knowledge.

4 MR. RUNDIO: I have no further questions.

5 THE COURT: Mr. Sierks, how much time do you
6 think you're going to need for redirect?

7 MR. SIERKS: Probably ten minutes.

8 THE COURT: Let's proceed then.

9 REDIRECT EXAMINATION BY:

10 MR. SIERKS:

11 Q I'd like to go back first to your suggestion about the
12 pit or the oil separator tank. In general to your
13 knowledge of the regulations if a hazardous waste
14 facility has a tank on site that presently stores
15 wastes, is it the owner and operator's responsibility to
16 determine whether the waste that's in the tank is
17 hazardous?

18 A Yes, it is.

19 Q You've also testified about the closure plan. Would one
20 aspect of the sampling program recommended for that site
21 be to determine whether the waste in that area was
22 hazardous if that was not already been determined?

23 A If that had not already been determined, yes, it would
24 be.

25 Q And if you have Exhibit 32 which is the revised Part B

1 open to page G-2 again, you testified earlier that that
2 information on the pit indicated that rain water had
3 collected in the oil separator pit,. Does that also
4 indicate that there was material present in the pit from
5 prior years' activity?

6 A Okay. I'm in 32.

7 Q I'm sorry, G-2.

8 A No. Exhibit 32?

9 Q Right.

10 A G-2. Yes, it states that material presently in it is
11 from rain fall and prior years' activity.

12 Q And then turning to the discussion about leaks on the
13 ground, and you had some discussion about how you would
14 characterize an area that may have received leaks, based
15 on your experience, would you address or examine areas
16 in which leaks had occurred as part of a closure plan
17 regardless of how you would classify that area?

18 A Yes.

19 Q And I believe -- was it your testimony that all spill
20 areas should be classified as land-fills under the
21 regulation? I believe you had some testimony that the
22 closest characterization was to a land-fill?

23 A The closest characterization would be to a land-fill.

24 Q Is the actual characterization a site-by-site
25 determination whether there is a land-fill at a

1 particular facility?

2 A Yes.

3 Q I mean is it your knowledge that E.P.A. has treated all
4 spill areas as land-fills at other sites?

5 A Well, it's been my experience that in areas where there
6 have been extensive spills or contamination, that we
7 have required removal of that material to the point
8 where additional samples taken come up clean or not
9 showing the parameter in question of contaminant, and if
10 that is not done then monitoring would be required.

11 Generally what happens in those situations is faced
12 with the threat of monitoring or having to monitor that
13 particular area, facilities as a rule would opt to do a
14 clean removal of that area. So, it's not usual to find
15 places like that characterized as land-fills.

16 Q In determining whether a waste pile or a surface
17 impoundment is present on site, do specific site
18 conditions affect that determination as well if it's
19 made by E.P.A. on the site?

20 A Could you repeat that please.

21 Q How would you determine if there is a waste pile or
22 surface impoundment? You indicated you apply the
23 regulatory definition. Is that to specific site
24 conditions and other available information you have?

25 A Yes, it is.

1 Q And then finally there is some questions about your
2 basis for the comments that you supplied on the closure
3 plan. I believe you indicated earlier that there are
4 regulations which specify what a closure plan has to
5 contain?

6 A Yes, there are.

7 Q Were your comments formulated with knowledge of those
8 regulations?

9 A Yes, they were.

10 MR. SIERKS: That's all the questions I have.

11 THE COURT: Any re-cross?

12 MR. RUNDIO: Just a couple.

13 RECROSS-EXAMINATION BY:

14 MR. RUNDIO:

15 Q I take it then that somewhere in the regulations we can
16 find the requirement that areas where leaks have
17 occurred have to be examined?

18 A I think that would fall into the performance standards
19 contained in the closure requirements.

20 Q Is that in the regulations?

21 A Yes. And that the regulations require that any areas
22 that have been used for management of hazardous waste or
23 that may be -- or that are contaminated need to be
24 de-contaminated or otherwise addressed.

25 Q Used for management though, is that how the regulations

1 qualify it?

2 A I'm not sure of the exact wording of the regulation at
3 this moment.

4 Q But in any event you go by the regulations?

5 A Yes.

6 Q I guess I shouldn't dwell on this, but I guess I can't
7 resist in asking this question. What if you have a
8 spill of a hazardous waste in transport, and then falls
9 into, say, a drainage ditch, is that a surface
10 impoundment under the regulations?

11 A It could become one if it were not cleaned up.

12 Q Depends on whether or not its cleaned up?

13 A Uh-huh.

14 Q Is that in the regulations?

15 A I believe there's a section in the regulations that
16 addresses spills and also addresses the issue of when a
17 wastes if discarded when a substance is discarded
18 becoming a waste.

19 Q And that's all in the regulations then?

20 A Yes.

21 MR. RUNDIO: I have nothing further.

22 THE COURT: Any redirect?

23 MR. SIERKS: No, Your Honor.

24 THE COURT: Okay, thank you. You may step
25 down.

1 (Witness excused.)

2 THE COURT: How are we schedule-wise?

3 MR. MCPHEE: Your Honor, we had one more
4 witness we were hoping to conclude today. He has a job
5 that requires his presence in the early part of the day.
6 He's one of two people working at a facility unloads
7 tank material that is also hazardous. I was hoping we
8 could get started with him. I don't know how late you
9 care to go today. I have probably a hour's worth of
10 questions myself and I would assume Mr. Rundio has some
11 cross he wants to do. I would not like to take him away
12 from his job tomorrow morning.

13 THE COURT: I've also been told -- my
14 secretary gave me a note saying they have arrested
15 somebody and they are awaiting for his initial
16 appearance and bond.

17 What time does your witness have to be at work
18 tomorrow?

19 MR. MCPHEE: 4:00 o'clock in the morning, Your
20 Honor, and he works through --

21 THE WITNESS: I should be done by noon.

22 THE COURT: Do you have anybody else tomorrow
23 morning?

24 MR. MCPHEE: We can -- we can bring somebody
25 on tomorrow morning, I guess, Your Honor.

1 THE COURT: Okay. He can come back in the
2 afternoon then.

3 Is your morning witness going to take all morning?

4 MR. MCPHEE: Possibly take a half day, Your
5 Honor, the way we've been going here.

6 THE COURT: Is it still within the realm of
7 possibility of finishing this whole hearing by Thursday?

8 MR. RUNDIO: When are you going to rest?

9 MR. SIERKS: I would estimate the way it's
10 going I would think we would be very lucky to finish
11 before Thursday and I still have three witnesses. If
12 they average half a day each, we shall go into about
13 Thursday afternoon.

14 THE COURT: Just have to press on and see
15 then.

16 Okay. 9:00 o'clock tomorrow.

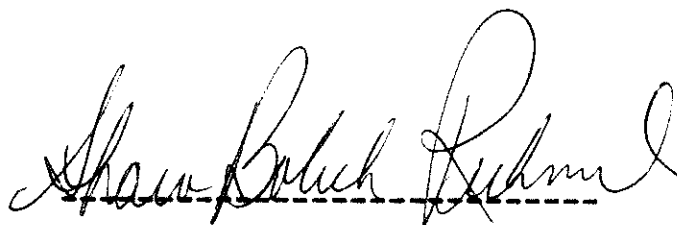
17 THE CLERK: All rise.

18 (At 4:50 o'clock the trial was adjourned,
19 to reconvene on March 26, 1986.)
20
21
22
23
24
25

C E R T I F I C A T E

I, Sharon Boleck-Richmond, being a duly authorized and acting official court reporter for the United States District Court, Northern District of Indiana, Hammond Division, do hereby certify that I did report in machine shorthand the foregoing proceedings, and that my shorthand notes so taken at said time and place were reduced to typewriting under my personal direction.

I further certify that the foregoing typewritten transcript constitutes a true record of said proceedings, so ordered to be transcribed.

A handwritten signature in cursive script, reading "Sharon Boleck-Richmond", written over a horizontal dashed line.

Sharon Boleck-Richmond

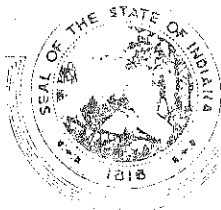
Official Court Reporter

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
-vs-)	No. H-86-9
)	
CONSERVATION CHEMICAL COMPANY)	
OF ILLINOIS and)	
NORMAN J. HJERSTED,)	
)	
Defendants.)	

The deposition of NORMAN J. HJERSTED, called as a witness by the Plaintiffs herein, pursuant to notice and pursuant to agreement of counsel as to time and place, and pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of deposition; taken before John F. Simack, Jr., C.S.R., a Notary Public within and for the County of Cook and State of Illinois, taken at 230 South Dearborn Street, Chicago, Illinois 60604, on Friday, the 14th day of March, 1986, at the hour of 9:00 o'clock a.m.

STATE OF INDIANA



INDIANAPOLIS

OFFICES OF ATTORNEY GENERAL

LINLEY E. PEARSON, ATTORNEY GENERAL

219 STATE HOUSE

46204

February 25, 1986

RECEIVED

FEB 28 1986

U.S. EPA, REGION V
WASTE MANAGEMENT DIVISION
HAZARDOUS WASTE ENFORCEMENT BRANCH

Mr. Norman B. Hjersted
President, Conservation
Chemical Company
5201 Johnson Drive
Suite 400
Mission, KS 66205

RE: Indiana Environmental Management Board v.
Conservation Chemical, Cause No. N-264

Dear Mr. Hjersted:

The Land Pollution Control Division of the Indiana Environmental Management Board has been notified by the Environmental Protection Agency that suit was filed in United States District Court, Northern District of Indiana against you and Conservation Chemical Company (Civil Action H86-9) on January 6, 1986. This suit was filed pursuant to the Resource Conservation and Recovery Act and seeks injunctive relief and the imposition of civil penalties.

Because of the scope of relief sought in this action, the Division will not pursue the above-captioned pending state administrative action, but will put the administrative action "on hold" pending the outcome of the federal case. This is to ensure that the federal action is resolved to the satisfaction of the State environmental agency.

We do not plan to intervene in the federal case at this time.

Sincerely,

Ann Scholl Long
Ann Scholl Long
Deputy Attorney General

ASL/lao

cc: Jonathan McPhee
William Minor
Sally Swanson
William Sierks
James Garrettson
Dennis Zawodni

CERTIFIED MAIL NO. P 101 700 979

PRESENT:

MR. JONATHAN T. MCPHEE, ESQ.
U.S. EPA, Region V
Enforcement Division
(230 South Dearborn Street
Chicago, Illinois 60604)

and

MR. WILLIAM SIERKS
Trial Attorney
Environmental Enforcement Section
Land & Natural Resources Division
U.S. Department of Justice
(10th & Pennsylvania Avenues, N.W.
Washington, D.C. 20530)

appeared on behalf of the Plaintiff;

McDERMOTT WILL & EMERY
(111 West Monroe Street
Chicago, Illinois 60603) by,
MR. LOUIS M. RUNDIO, JR.

appeared on behalf of the Defendants.

I N D E X

<u>Witness</u>	<u>Examination</u>
Norman J. Hjersted	

By Mr. McPhee.....DX.....5

E X H I B I T S

<u>Plaintiff's Deposition Exhibit</u>	<u>Page</u>	<u>Line</u>
No. 1	26	4
No. 2	114	22
No. 1	137	19
No. 3	182	16
No. 4	184	13
No. 5	192	10
No. 6	195	6
No. 7	196	21

1 NORMAN J. HJERSTED

2 called as a witness by the Plaintiff herein,
3 having been first duly sworn to testify the whole
4 truth and nothing but the truth, was examined and
5 testified as follows.

6 MR. MCPHEE: I'd like to start out
7 by stating for the record that this
8 deposition was originally scheduled to take
9 place yesterday, the 13th of March, and I
10 believe Mr. Hjersted had some difficulty
11 getting to Chicago and we didn't hear about
12 it until quite late in the game. Also
13 we're slightly delayed starting this
14 morning, we're starting at 9:20 and this
15 deposition was scheduled to start at 9:00
16 o'clock.

17 Mr. Hjersted, I've got a few
18 prefatory remarks. You've been involved in
19 litigation quite a bit before, and I
20 understand you've had your deposition taken
21 and given testimony a number of times. I'm
22 sure you talked to your lawyer about the
23 testimony that you're going to give here
24 today, and I want you to listen to my

1 instructions with respect to what I'd like
2 you to do in the course of this deposition.

3 The first thing I'd like to
4 remind you is that you are under oath, and
5 the second thing is I'd like you to listen
6 very carefully to the questions I ask you.
7 If you don't understand the question,
8 please explain to me that you do not
9 understand it. If you do understand the
10 question, please answer the question that I
11 ask you.

12 DIRECT EXAMINATION

13 BY MR. MCPHEE:

14 Q Let's start with the background
15 information. Where do you presently live?

16 A Lynwood, Kansas.

17 Q Is that the only address?

18 A It's Rural Route 1, Lynwood, Kansas.

19 Q There's no box number or anything?

20 A Our mailing address is P.O. Box 72,
21 Lynwood, Kansas 66052.

22 Q Let's start with your education here.
23 Where did you receive your undergraduate
24 education?

1 A My what?

2 Q Undergraduate education?

3 A At Rice University.

4 Q And what subject did you study there?

5 A Chemical engineering. Do you want all
6 my education or just that relevant to the chemical
7 business?

8 Q If there's other educational
9 experience, I'd certainly like to hear about that
10 too?

11 A Yes, Columbia University and the
12 University of California, naval engineering,
13 University of Texas zoology, University of
14 Missouri at Kansas City, sociology.

15 Q Have you taken any business courses or
16 accounting?

17 A No.

18 Q Let's go through it one by one then. I
19 guess Rice was the first place that you attended
20 undergraduate?

21 A Yes.

22 Q And you obtained what degree there?

23 A It's called a degree in chemical
24 engineering, it's half way between a master of

1 science and bachelor of science in chemical
2 engineering.

3 Q And the courses you took in the process
4 of obtaining that degree are what?

5 A Well, I probably took on the order of
6 30 courses, and I wouldn't want to say what they
7 all were, but basically they were mathematics,
8 chemistry, physics, English.

9 Q Were there engineering courses?

10 A Oh, yes -- well, chemical engineering,
11 I mean. Like I said, there were 30 courses and
12 it's been 42 years again, so I'm --

13 Q You had both inorganic and organic
14 chemistry?

15 A Oh, yes. I mean thinking of the exact
16 titles --

17 Q I'm asking generally the kind of
18 education.

19 A Yes, it was a very intensive course in
20 what I call science oriented courses.

21 Q But you did have quite a bit of
22 engineering while you were there?

23 A Yes.

24 Q And you used that subsequently in your

1 business?

2 A Oh, yes.

3 Q Are you certified as an engineer in any
4 state?

5 A State of Kansas.

6 Q What sort of license or certificate do
7 you hold there?

8 A What's called a professional engineer.

9 Q And what does that allow you or qualify
10 you to do?

11 A Well, we can do studies or work
12 involved with our specialty, which is chemical
13 engineering. We can seal drawings and papers, you
14 know, actually imprint with our signature showing
15 that we do have this certification.

16 Q And that means what with respect to
17 those drawings?

18 A That means you've been certified and
19 all that that signifies.

20 Q That's what I'm trying to get at. What
21 does that signify?

22 A Well, basically it means you have both
23 educational and experience levels, degrees of
24 responsibility in the areas of expertise, you see.

1 Q And again your expertise is in chemical
2 engineering?

3 A Right.

4 Q What was your next educational
5 experience?

6 A After Rice?

7 Q Yes.

8 A I was in naval engineering at Columbia
9 and the University of California.

10 Q What does naval engineering involve?

11 A Well, that involves the design of ships
12 and the mode of equipment that goes into that
13 design, what factors make a ship seaworthy and
14 non-seaworthy. It's really a preparation for
15 obtaining a commission with the U.S. Navy.

16 Q Did you ever follow through with that?

17 A Oh, yes, I received a commission.

18 Q At what rank?

19 A Well, you started out with ensign.

20 Q How far did you go up the ladder?

21 A Lieutenant J.G.

22 Q How long were you with the Navy?

23 A I was with the Navy from '42 to '46
24 actively, and then on inactive reserves -- well,

1 call up each year, to about oh, in the early
2 '50's.

3 Q Did you use your training in naval
4 engineering when you were with the Service?

5 A Oh, yes, I was at sea for a year, over
6 a year.

7 Q Beyond that experience, what was the
8 next educational experience you had?

9 A Well, interspersed with that I had this
10 short period at The University of Texas and took a
11 course in zoology, and then the next one was
12 University of Missouri at Kansas City, working on
13 a masters in sociology.

14 Q Was the zoology course a single course?

15 A Yes, just a single course.

16 Q And the master in sociology?

17 A I didn't get the masters, I got about
18 two-thirds of the credits.

19 Q And beyond that, any other educational
20 experience?

21 A No.

22 Q Have you taken other courses or
23 seminars during the time -- well, since 1946?

24 A I just don't recall any, no.

1 Q No seminars on hazardous wastes?

2 A Oh, I've gone to a lot of conferences
3 on water treatment and waste treatment, I'm trying
4 to recall, there was one sponsored by the EPA, and
5 I think the emphasis then was on geology, or
6 hydrology.

7 Q Hydrology in what context?

8 A For landfills.

9 Q Do you know approximately when that
10 was?

11 A No, I couldn't.

12 Q Was it before or after the hazardous
13 waste rules became effective?

14 A Well, I'm sure it was when the EPA was,
15 you know, organized, so that would be after the
16 rules came into effect.

17 I did attend conferences, I think it
18 was the Department of the Interior had
19 jurisdiction, even the Corps of Engineers.

20 Q Did you attend any courses --

21 A I mean those were just a few hours.

22 Q Did you attend any courses after, say,
23 August of 1980 where you were discussing or
24 talking about the hazardous waste rules.

1 A I can't recall at this time.

2 Q Do you have any record that would
3 indicate whether you attended a conference of that
4 sort, records of payments, for example, cancelled
5 checks, something that would show that you
6 attended a meeting of that sort?

7 A They might be available, yes, I have --
8 I'm just trying to think it through. We keep our
9 records of our checks so long. If we did write
10 out a check for the conference, then we would have
11 a record of that.

12 Q When you say we, you're referring to
13 Conservation Chemical or yourself?

14 A The accounting department of
15 Conservation Chemical.

16 Q These would not have been something
17 that you paid for personally?

18 A Not a conference like that, no.

19 Q Have you had any background in
20 toxicology?

21 A No formal education. I did private
22 studies, private readings, we take a lot of
23 journals, you know, so I've read that.

24 Q Have you had occasion to consider the

1 toxicology of the materials that you handle at the
2 Conservation Chemical site at Gary?

3 A Oh, yes.

4 MR. RUNDINO: I'll object, specify
5 the materials.

6 MR. MCPHEE: I think I specified the
7 materials, I specified the materials that
8 were handled at the Conservation Chemical
9 facility.

10 MR. RUNDINO: Any or all. The
11 question is have you had occasion to study
12 the toxicology of each and every chemical
13 handled at Conservation Chemical Company of
14 Illinois.

15 MR. MCPHEE: That's the first
16 question, right.

17 BY THE WITNESS:

18 A I wouldn't make that claim, no.

19 BY MR. MCPHEE:

20 Q Which of the materials that you've
21 handled have you had occasion to study?

22 A I'd say my greatest time or greatest
23 focus was that of our recycling operations in
24 pickle liquor specifically. Secondarily of course

1 a lot of time in cyanide treatment.
2 Silicatetrachloride, and in a general way
3 chlorinated hydrocarbons, just very general.

4 Q You did handle chlorinated hydrocarbons
5 at the Gary facility?

6 A Yes.

7 Q Do you happen to know what particular
8 compounds?

9 A Well, trichlorethylene is one of them.
10 Methylenechloride -- that's two that I can recall
11 right off the top of my head.

12 Q Your Part B submission would indicate
13 other materials that might have been present at
14 the site?

15 A I would think so.

16 Q You dealt with chromic acid at the
17 site?

18 A Yes.

19 Q Did you study the toxicology of that
20 material?

21 MR. RUNDINO: I object. What do you
22 mean by toxicology? I think you started
23 off by asking if he had any formal
24 education in toxicology, he said no, but he

1 read some journals. I think that's what
2 the record shows.

3 MR. MCPHEE: Not only did he read
4 journals, but he read other materials as
5 well, I believe he described it as private
6 study. I believe he understands my
7 question.

8 MR. RUNDINO: I don't understand the
9 question, and I object to asking the
10 question unless you attach a definition to
11 it. If you are satisfied that Mr.
12 Hjersted knows what you mean by toxicology,
13 and you will live with whatever he
14 understands, then I allow him to answer the
15 question. If you wish to clarify the
16 record on what you mean by toxicology, I'll
17 allow you to do it that way. Either way,
18 it doesn't make any difference to me, but I
19 want the record clear that there has not
20 been, at least to my mind, an agreement on
21 what you mean by toxicology, and because of
22 that I find the question objectionable.

23 BY MR. MCPHEE:

24 Q You've made your objection. Mr.

1 Hjersted, what do you understand me to mean when I
2 use the word toxicology in connection with the
3 study of the toxicology of materials that have
4 been handled at your site?

5 A Well, I would think, here I'm assuming
6 what you mean is that -- is it's what you call a
7 working knowledge, and so you can instruct your
8 foreman or your workers on what kind of proximity
9 they can have with certain compounds. They know,
10 I mean you know the hazard and they know the
11 hazards. That's what I call a working knowledge.

12 Q As an example, let's take chromic acid.
13 What other potential toxicological problems does a
14 worker have being exposed to chromic acid?

15 A As I recall, one effect of chrome, and
16 I don't recall the specific limits, it has a
17 property of making open cuts or lesions, it
18 lengthens the time that these cuts or lesions will
19 heal, that's one of the problems of the chromium.
20 And I presume just in general the corrosivity.
21 Here we're talking about fairly high
22 concentrations, you know, like --

23 Q In terms of ph.?

24 A No, like getting what you would define

1 as chromic acid. We know too that even very low
2 concentrations, one doesn't drink, one does not
3 ingest.

4 Q And you know that from --

5 A This is what I call a working
6 knowledge.

7 Q You know that from your studies, your
8 private studies, as you described, them with
9 toxicology materials?

10 A What's that?

11 Q You know these things that you've been
12 stating here from the private study that you
13 conducted of the toxicology of the material?

14 A That's right.

15 Q Did you have occasion to study, for
16 example, the toxicity of something like chromic
17 acid to a particular organism?

18 A I'm aware that there are limits for
19 different organisms, yes.

20 Q You say you're aware in what context
21 though?

22 A Well, I know that if -- that for each
23 organism there's a limit that they can tolerate in
24 their environment. I don't keep that knowledge in

1 my mind at all times. What that limit is for each
2 organism, I just know that cite and where to find
3 that information, if it's relevant.

4 Q All right. Turning to the Conservation
5 Chemical Company of Illinois, I'd like to rehearse
6 the entire history of that operation with you if I
7 could.

8 When did Conservation Chemical of
9 Illinois start doing business?

10 A I recall it was in the late '60's, '67
11 or '68, and by business, it was the first order of
12 business was the procurement of a site.

13 Q And the site is the one you bought on
14 Industrial Highway?

15 A Yes.

16 Q Have the boundaries of the site changed
17 in any way since the initial operations?

18 A No.

19 Q And you bought that site from?

20 A Leonard Refinery.

21 Q Who else was involved in the early
22 stages of the business with you?

23 A We had -- in the early stages were
24 still in Kansas City, and we had a manager and one

1 or two other -- one person that had come from
2 Kansas City and some local people.

3 Q Do you know who those people were, can
4 you recall their names?

5 A Mr. Egan was the manager.

6 Q Is that Harold Egan?

7 A Yes.

8 Q And the other individuals?

9 A Gary Payne.

10 Q Other names?

11 A That's all.

12 Q That you can recall?

13 A That's all I can recall.

14 Q Were there other employees?

15 A Yes.

16 Q And you say you started up the business
17 and you were located at that point in Kansas City?

18 A Yes.

19 Q And that changed?

20 A Sometime in the late '60's I moved my
21 domicile to the Gary area.

22 Q The late '60's?

23 A Yes.

24 Q And how long did that situation

1 continue?

2 A It was until 1974.

3 Q Who currently owns the site, in whose
4 name is title held?

5 A At Gary, that's Conservation Chemical
6 of Illinois.

7 Q And that's always been the case?

8 A Yes.

9 Q Starting up or starting back at the
10 beginning of the operations at the Gary facility,
11 what processs did you originally have in the
12 operation there as far as the dealing with
13 industrial waste?

14 A As I recall, it was the taking of
15 pickle liquor and making a saturated solution with
16 scrap iron.

17 Q That was the only process that existed
18 at that point?

19 A You asked me for the first one, I said
20 that's what I recall the first one was.

21 Q And sequentially, what other operations
22 did you conduct there?

23 A I may not have this in exact order, but
24 it was all about the time. Another one was the

1 complexation of acidic plating wastes with the
2 iron saturated iron solutions, named pickle
3 liquor, then neutralization with lime, hauling
4 this complex material to a landfill.

5 Another operation --

6 Q Can we stop there. You say complexing.
7 What does that mean?

8 A Well, the whole thrust of the process
9 was to have an ample supply of iron which aided in
10 the precipitation of other metals, you know,
11 copper, nickle, chrome. Iron also was aided -- or
12 was used in the reduction of hexavalent chrome to
13 trivalent, which rendered it relatively insoluble,
14 you know, upon neutralization.

15 The other operations were really that
16 of terminaling, bringing things in in drums or
17 bringing things in in small loads, ship them out
18 in larger loads, tank cars or tank trucks for
19 treatment at off site facilities.

20 Q You said you brought things down. What
21 kind of things were those?

22 A The principal thing was -- or category
23 was alkaline plating wastes and that's really
24 cyanide solutions, solvents.

1 Q Solvents of what sort?

2 A Well, I'd call them degreasers,
3 primarily.

4 Q Those would be chlorinated solvents
5 then?

6 A Not -- I wouldn't say mostly, but it
7 had chlorinated solvents in them, yes.

8 Q So there would be both non-chlorinated
9 and chlorinated solvents presents?

10 A Right.

11 Q And that's been going since the early
12 days of the operation?

13 A Right.

14 Q As far as the complexing operation, was
15 that done at the same location where the
16 processing that was running up until the end of
17 the operations in 1985 done?

18 A Yes.

19 Q Using much the same equipment?

20 A Oh, similar -- well I don't know --
21 you're asking me a couple of questions at once.
22 Could you repeat the question.

23 Q Well, let's break them down. You did
24 complexing of materials, in other words, you mixed

1 plating waste with pickle liquor, right?

2 A Right.

3 Q And plating waste is materials that
4 contains the metals you just identified and
5 probably some others too?

6 A Right.

7 Q Chrome, copper, nickle. Would there be
8 cadmium present?

9 A I would think so, but not in a great
10 degree.

11 Q Other metals?

12 A Oh, we had cobalt, we had beryllium --
13 well, I don't want to search my mind.

14 Q Well, you tested these materials though
15 in the past, right, and there should be document
16 that reflects the contents of those materials?

17 A I'd say in that period we tend to rely
18 on the test analyses of the generator.

19 Q Would you always get an analysis of the
20 generator of either a waste stream or individual
21 load?

22 A We generally got an analysis at the
23 inception of a contract.

24 Q And did you have experience where the

1 waste stream would change during the time that you
2 were operating with that particular resource?

3 A Well, there were incidents when they
4 would change, yes.

5 Q Do you recall any of those specific
6 incidents?

7 A It's as hard, you know, I had other
8 activities, and it's hard to associate an incident
9 with one company, or one location. At this time I
10 can't recall incidents that would be specific to
11 Gary. I can't recall a specific incident, but I
12 would say that yes, they occurred.

13 Q So they might have occurred at the
14 Conservation Chemical facilities either in Kansas
15 City or St. Louis?

16 A I definitely remember it though at
17 other facilities, yes, but a specific incident in
18 Gary, I can't remember at this moment, you know.

19 Q You've always been president of
20 Conservation Chemical of Illinois?

21 A Yes.

22 Q What other positions do you hold with
23 the company?

24 A Oh, I think I'm Chairman of the Board

1 and Treasurer.

2 Q Your a stockholder too?

3 A Yes.

4 Q What percentage of the stock do you
5 hold?

6 A I think 97 or 98 percent.

7 Q Who owns the remainder?

8 A Mr. Wagner and Mr. Seale.

9 Q Do you know their first names?

10 A Mr. Earlis Wagner and Mr. Stuart
11 Seale.

12 Q Getting back to the complexing process,
13 you've got a treatment area in the northeast
14 corner of the facility at Gary, right?

15 A I would call that more the south
16 central.

17 Q Anyway, there's a process area on the
18 facility?

19 A Can I refer to the drawing.

20 MR. MCPHEE: Let's just mark this as

21 Deposition Exhibit No. 1.

22 (Whereupon said document was marked
23 as Plaintiff's Deposition Exhibit
24 No. 1 for identification, 3/14/86,

1 J.S.)

2 BY MR. MCPHEE:

3 Q Looking now at what's Deposition
4 Exhibit 1, which is also attachment A to the
5 complaint, can you tell me what that document is,
6 sir?

7 A This is a plot plan of the Gary
8 facility.

9 Q As prepared by whom?

10 A Well, Dames & Moore have their name on
11 it. I don't know that they prepared this, I think
12 they might have got that from some other source,
13 but I don't know.

14 Q That was originally parts of a report
15 that was prepared under a contract with you?

16 A Yes, but as I say, I don't think they
17 did this particular work.

18 Q But that map was part of that report,
19 right?

20 A Right.

21 Q What was the purpose of the report?

22 A That was to give us advice on
23 construction and location of monitor wells.

24 Q For what purpose?

1 A So that we could understand what the
2 State of Indiana required of us and what it would
3 mean financially and where the things would be
4 located.

5 Q That map doesn't have any suggested
6 well locations, does it?

7 A Well, there's none designated on the
8 map, but as I recall, they did give us -- they did
9 designate potential sites.

10 Q How many locations, sir, how many
11 different well locations do you recall?

12 A I wouldn't want to -- I don't recall
13 the exact number, no.

14 Q Okay.

15 A It was a small number though. It
16 started out by asking the question of where was
17 the process area.

18 Q Do you recall sitting down with us on
19 the 20th of December, myself and Sally Wanson and
20 Mr. Sierks and looking over this document?

21 A Yes.

22 Q Let's go through it spot by spot. The
23 process area that we're talking about now is on
24 sort of the right center portion of the document,

1 right?

2 A Yes, I would call this -- well, it's an
3 irregular shape, but I would say south, more like
4 south center, the southeast, so it's -- the best
5 way to identify it on this drawing is that the
6 process area is just below or to the south of the
7 building marked office, that's the best way to
8 define it.

9 Q And the pickle liquor treating
10 operation that you conducted at the site has
11 without exception been conducted in that area
12 since the beginning of the project?

13 A As far as the process part, yes.
14 There's been other storage areas, but the process
15 part has been right there.

16 Q Some of the other tanks shown on the
17 property have been used for storage then?

18 A Yes, there's been a storage area that's
19 been moved about from time to time, but as I
20 recall, the actual complexation, neutralization,
21 it's been done right there.

22 Q As far as the complexing operation, it
23 was also conducted in that same area using the
24 same equipment?

1 A Well, not the same -- not the same that
2 is there now, but similar equipment.

3 Q And you designed the process?

4 A I don't think I was the one that choose
5 -- well, I was a part of that, not the total part.
6 The plant manager was -- had their input as to the
7 type of equipment.

8 Q The plant manager was who at that
9 point?

10 A Let's see, Tom Cassaday, I think, I
11 think that was him.

12 Q What was his background, was he an
13 engineer?

14 A I don't recall his formal training. I
15 do recall that he's -- he had a lot of experience
16 in liquid metal salts and recovery and treatment
17 prior to coming to the company, and then of course
18 after he left he's made his living that way.

19 Q Where does he work now, do you know?

20 A He's the owner of, I think it's called
21 CP Inorganic, something like that.

22 Q Located where?

23 A Or CP Chemicals.

24 Q Where?

1 A In Joliet, Illinois.

2 Q You're generally familiar, or I should
3 say familiar in detail with the design and
4 construction of the operation of the treatment
5 processs there, right?

6 A I would say so, yes.

7 Q And during the period 1968 to, say, --
8 was it '74 that you moved out of the Gary area?

9 A Correct.

10 Q How often would you have been at the
11 plant?

12 A Between the late '60's and '74?

13 Q Right.

14 A Well, every working day with the
15 exception of when I was at the other plants or --
16 well, you ask me the question. I would guess a
17 half to two-thirds of the time.

18 Q Okay. And as far as the process area
19 itself goes, is the sump that's in that area
20 always been present?

21 A Well, yes, it was not always used, but
22 it was always there, we did not build it.

23 Q That's some of the equipment or
24 construction --

1 A That's part of the equipment that came
2 with the refinery.

3 Q Let's go back over what was there when
4 the refinery turned the property over to you.
5 There were three large storage tanks, correct?

6 A Correct.

7 Q That was 19, 20 and 22 as designated on
8 that chart or map?

9 A Yes.

10 Q What was in tank 19 at that point?

11 A Well, tank 19, when we came there, was
12 -- we called that number 5 or number 6 off spec
13 heater oil, that was the designation given it at
14 the time, and that was, oh, half or two-thirds
15 full, a substantial amount of material in it.

16 Q And in tank --

17 A Tank 20 was, as I recall, substantially
18 empty, I mean essentially empty. There might have
19 been some sludge or something on the bottom, I
20 don't know, but there wasn't any real liquids
21 there.

22 Then tank 22 had 5 or 6 foot of high
23 melt asphalt. I can remember this, because I
24 remember walking into it and looking around, and

1 you can actually stand on it, on the material.

2 Q What other equipment was present when
3 you bought the refinery?

4 A Just to the left of the office building
5 there was what we call an oil boiler house, and
6 there was, oh, between tank 22 and tank 19, this
7 rectangle is a cleaning tower, it's about a 30
8 foot cube. There was -- well, you can see a tank
9 called number 2 and one like it left -- oh, yes,
10 on the extreme right-hand side of the property
11 there was what we call an operators house, or
12 later we called it a pilot plant house, of
13 concrete block construction, and then down here
14 was a little compressor house.

15 Q Was there also --

16 A That's down on the southeast. We have
17 the API separator box -- we're talking about
18 facilities, that's 100,000 plus storage capacity.
19 You're just interested in things on the property.

20 Q The equipment and facilities that were
21 there.

22 Any other tanks than the ones that
23 you've already indicated?

24 A There may have been a few smaller

1 tanks, but I -- there weren't many, I don't recall
2 exactly how many.

3 Q So most of the other tanks that are
4 currently indicated in the --

5 A Oh, yes, I forgot all about that, we
6 had a tower, a hundred foot tall tower, and that's
7 just up and to the right of the office, and then
8 there was a sphere that was used for desalting
9 crude.

10 Q There's a sump out there of concrete
11 blocks that's next to the railroad tracks that
12 supposedly has tetraethyl lead in it. Was that
13 there when you were there?

14 A I was going to talk about that, that's
15 off of our site, it's just immediately off of our
16 site, right next to the railroad tracks at the
17 upper right-hand side of the drawing.

18 Q On the far extreme south corner --

19 A We had this process sump, as I
20 mentioned before -- excuse me, what was the
21 question.

22 Q I was going to ask about the extreme
23 south corner, you've got something that's labeled
24 a pie basin. Was that basin present when you

1 bought the property?

2 A Yes, but I was confining myself to --

3 Q Facilities and equipment?

4 A Well, more like tank and building
5 equipment, but yes, there is a pie basin, there
6 was a basin of sorts around both of these other
7 tanks.

8 Q 19 and 22?

9 A Yes.

10 Q What condition was the pie basin in
11 when you bought the property?

12 A Well, it was, as I recall, it had
13 residues in it, petroleum type residues.

14 Q Was there any other contents identified
15 to you in the process of your purchase of the
16 property?

17 A You mean of the pie basin?

18 Q Right.

19 A No. When we bought it there was a lot
20 of pipe still there, you know, sort of half torn
21 out of the ground, a lot of pump foundations that
22 they'd left, we had quite a job, you know, quite a
23 task of cleaning the place up so it could be, you
24 know, useable to us.

1 Q As far as the pie basin goes, that
2 wasn't full, was it, at that point?

3 A No.

4 Q So in 1968 you bought something that
5 had a depression there effectively?

6 A Right.

7 Q And how deep was the depression?

8 A I just don't recall. I think I would
9 rather really, you know, if you wanted to know the
10 answer, you know, I would go out and measure to
11 see where the oil level is. Of course that's
12 where it is now, probably would have been higher
13 then because it probably settled or condensed more
14 in time. That's speculation.

15 Q Do you have any photographs of the site
16 in its original condition?

17 A Do I have any?

18 Q Right.

19 A Not to my knowledge.

20 Q Do you know anybody that might have
21 retained photographs or pictures of the facility
22 in its original condition when you bought it?

23 A Well, you know, I would ask the
24 employees at that time.

1 They could have taken pictures, but I
2 don't recall taking any myself.

3 Q All right. Getting back to the process
4 area, you say you didn't use that sump originally?

5 A That's right.

6 Q When did the sump start to be used?

7 A I'm afraid to say, I just don't recall.

8 Q Was it before 1970?

9 A I would say it was after '70, sometime
10 in the '70's, but I just don't -- I don't recall
11 that date.

12 Q Did you start up the pickle liquor
13 treatment or complexing operation with all new
14 equipment?

15 A No.

16 Q You used tanks that already existed on
17 the property?

18 A No, it was equipment we purchased, but
19 not -- oh, like the one tank there that came with
20 the property, the one I mentioned that had a 2 on
21 it, one of the same size we put in a heavy duty
22 PVC liner and used that for storage of pickle
23 liquor.

24 Q The liner was for what purpose?

1 A To avoid corrosion of the steel tank.

2 Q Pickle liquor being a very acidic
3 material?

4 A Yes.

5 Q What was the usual ph. of the stuff
6 that was delivered to you as pickle liquor?

7 A I would say 1 or below 1 would be
8 typical.

9 Q Quite acidic, in other words?

10 A It's all relative.

11 Q More acidic, for example, than human
12 blood or tap water?

13 A Oh, sure.

14 Q And you say that there is a reason for
15 the liner, and that was to reduce the corrosion or
16 avoid corrosion of the tank?

17 A What's that?

18 Q You say that the reason for the liner
19 was to reduce or avoid the corrosion of the tank?

20 A That's correct.

21 Q Do you have any idea from your
22 engineering background how quickly material at ph.
23 1 or less would eat steel away?

24 A Well, there's many other factors

1 involved in our process of making ferrous
2 chloride, we could take 5 tons of scrap iron and
3 it would dissolve in the process in less than a
4 half of a shift, that's what you call corrosive,
5 that's why I say it's all relative.

6 Certain grades of pickle liquor can
7 actually be held in steel for a short piece
8 without significant effect.

9 Q Would the material that you handle fall
10 into that category or something else?

11 A Oh, some of it would, but, well, a lot
12 wouldn't.

13 Q As far as the tanks that were used in
14 the process goes -- well, let's go through the
15 process. As I understand it in talking with other
16 employees of the facility, a load of material
17 would come in and be placed into a storage tank or
18 directly into the process tank that was behind the
19 office building, is that the practice?

20 A Are you talking about the recycling or
21 the disposal process?

22 Q I want to go through first the
23 production of the ferrous chloride material. So
24 assuming now that we're talking about the

1 recycling, as you describe it, the process of
2 making ferrous out of ferric chloride --

3 A The other way around, you make ferric
4 out of ferrous.

5 Q That a load would be brought and placed
6 into a storage tank, like tank 2 or directly into
7 the process vessel?

8 A Correct.

9 Q And then outside the vessel, in the
10 processing area, there would be a box or open top
11 tank of some sort?

12 A Yes, that was a brick lined tub, or
13 that is a brick lined tub.

14 Q And what effectively you would do is
15 place iron in the tub and then circulate the
16 ferrous material over the iron with pumps through
17 a series of plumbing and back into the process
18 vessel?

19 A Right.

20 Q And you'd do that until you'd reached a
21 sufficient level of iron?

22 A Well, yes, we'd also simultaneously,
23 you might say, inject chlorine.

24 Q That would be injected into the process

1 vessel?

2 A No, into the circulating stream, and
3 that would change the divalent of iron to
4 trivalent iron. Then when it hits that trivalent
5 iron hits the scrap pile, it would be reduced back
6 to divalent iron, which dissolves iron and
7 increases the concentration to the desired level.

8 Q And what ph. would the system be
9 operating at all through this process?

10 A Well, I would say it would vary from
11 less than 1 to maybe as high as 2.

12 Q Now, as far as the pumps that were used
13 to circulate, how many pumps were there?

14 A One.

15 Q Just a single pump?

16 A Correct.

17 Q And that would be located where in the
18 process?

19 I don't mean physically, but where in
20 the stream would the pump be placed?

21 A The pump took sludges either from the
22 bottom of the what we call the reactor --

23 Q That would be the lined box?

24 A No -- well, let's say from the bottom

1 of the chlorinator or the bottom of the scrap
2 dissolving tub.

3 Q And then pass the material back into
4 the big process vessel or tank?

5 A It would inject the material -- or the
6 discharge of the circulating pump would go into
7 the bottom of the chlorinator with, of course, the
8 chlorine.

9 Q The chlorinator would be a separate
10 vessel?

11 A Yes, there were two vessels in the
12 cycle or in the process.

13 Q The tank or the vessel that you used
14 for the process itself, or the two tanks I guess
15 we've established now, were those new tanks when
16 you bought them?

17 A Well, one was and the other was used.

18 Q Which one was the new one?

19 A I think F-1.

20 Q Is that still there?

21 A Yes.

22 Q And the used one is still there too?

23 A Yes.

24 Q Are those rubber lined or neoprene

1 lined?

2 A The ones that are not fiberglass are
3 rubber lined, yes. The tubs, beside rubber lining
4 are brick lined.

5 Q But the two that we're concerned about
6 here, you describe one as F-1 and the other for
7 the used one, is there a number for that tank?

8 A I believe it's CB-3, the CB meaning
9 cone bottom number 3, because they had like that
10 shape.

11 Q Were those rubber lined?

12 A Yes.

13 Q Okay. Now, the pump itself has been
14 describe to me as a water cooled pump. Could you
15 tell us exactly how that works?

16 A Well, the seal was water cooled, but
17 the pump itself was not. We have water cooled
18 pumps, but that was not it. Just the seal was
19 water cooled.

20 Q What kind of pump was it, was it a vane
21 pump?

22 A Call it a centrifugal pump.

23 Q And the only exits from the pump
24 housing then would be the intake from the one

1 side, the discharge from the other side and then
2 the shaft for the impeller, right?

3 A Correct.

4 Q And the seal we're talking about is
5 around the impeller shaft?

6 A Right.

7 Q And what sort of packing or stuffing
8 box is attached to that?

9 A Well, we use both what we call
10 mechanical seals and what's called packing,
11 mechanical packing, and we use quite a variety of
12 things, but the main one was Teflon impregnated
13 material.

14 Q And do you happen to know what pressure
15 the water runs at in the water cooled portion of
16 the pump?

17 A It's a low pressure, and I would
18 speculate it's on the order of 5 pounds, but it
19 could be higher or lower.

20 Q What would the pressure in the housing
21 be?

22 A Well, the pump housing would be the
23 head of the liquid plus for the intake side and on
24 the discharge side could vary between 20 and 40

1 pounds, but mainly about 25 pounds.

2 Q All right, looking to the later stages
3 of the operation then, let's say from 1980 on, you
4 were still operating on the pickle liquor
5 treatment process, right?

6 A Well, as I recall when I use the word
7 treatment -- well, the neutralization of pickle
8 liquor as a business, to my knowledge, ended in
9 the mid or early '70's.

10 Q Let's stay with the treatment process
11 at this point.

12 A The recycle.

13 Q Right.

14 A What was the question?

15 Q After say 1980, after the point at
16 which the hazardous waste rules became effective,
17 you were continuing to process pickle liquor at
18 the site?

19 A Right.

20 Q To turn it into the ferric form?

21 A Right.

22 Q In looking at the whole period of time
23 when the process was in operation for the
24 treatment of that material, wasn't it a regular

1 occurrence that you had substantial leaks of
2 material out of the process through a number of
3 sources, for example, let's start with the packing
4 glands, did they leak?

5 A Well, I didn't consider that as such.
6 Once the issue was raised I asked the manager to
7 instruct his operators to actually keep a record
8 for about a month on what the ph. of the gland
9 water was on each shift, you know, catch the
10 amount, register the amount of gland water caught,
11 the amount of time each pump ran and what it was
12 running on, just to identify quantitatively the
13 scope of this thing.

14 Q And when was that?

15 A That was in October of '85.

16 Q That was in response to what?

17 A What's that?

18 Q What was that request to the manager in
19 response to?

20 A Why did I do it? Because the State of
21 Indiana considered this a big problem, and I
22 wanted to find out to what extent it was a
23 problem, what impact would that have on the
24 environment.

1 Q There is a document, I take it, that
2 includes all the findings that your plant people
3 made during that process?

4 A Yes.

5 Q Now, as far as other sources of --
6 let's gets to the basic question here.

7 You say you don't know exactly when
8 that process sump was put into use, is that
9 correct?

10 A I just don't recall, no.

11 Q Is there any document you have that
12 might reflect that?

13 A I would think that, you know, somewhere
14 there's a document that notes that.

15 MR. RUNDINO: Stop for a minute.
16 What process sump are we talking about?

17 THE WITNESS: This one right here.

18 MR. RUNDINO: That doesn't help me.
19 Is this the brick lined one with the iron
20 in it?

21 THE WITNESS: No. The sump is
22 something that's under the ground, low
23 elevation.

24 MR. RUNDINO: Okay.

1 BY MR. MCPHEE:

2 Q Have you ever looked at the
3 construction of that sump?

4 A Oh, yes.

5 Q And what is it?

6 A Concrete -- well, the original was all
7 concrete.

8 Q What is it now?

9 A In -- when we started our ferric
10 chloride, or resumed our ferric chloride
11 production in the '80's, we -- in one corner of
12 the process sump we installed a rubber lined
13 fiberglass tub, it was a cone with a concrete wall
14 around it, and that was a way of picking up,
15 whenever we take samples or empty out lines and
16 all that, had concentrated material, it would run
17 into that thing, and that would be pumped back
18 into the process.

19 Q What's the soil like underneath the
20 process area? Let's look at it this way. Is
21 there any kind of concrete pad or anything that
22 covers the entire process area?

23 A Yes, that's what I pointed out, that we
24 put in a lot of concrete under the new -- I

1 wouldn't say the new, the new or new to us storage
2 or process equipment, either asphalt aggregate or
3 concrete.

4 Q But are there exposed areas of soil
5 that might have come into contact with spills, for
6 example, or the kind of material that you're just
7 talking about, running out of lines in the process
8 area?

9 A Well, yes, there was some tanks that
10 had been in service some time and had -- didn't
11 have the spill protection under it.

12 Q You say there was. Do you mean "was"
13 as in you altered that situation or that
14 continued?

15 A We were taking those things out of
16 service and putting these new facilities into
17 service.

18 Q But are all the tanks that you
19 currently use for processing or that you were
20 using up until the end of 1985 for processing on
21 either concrete or some other sort of surface that
22 would be intended to contain spills or leaks from
23 the tanks, as opposed to native soil?

24 A I would like to say 90 plus percent,

1 just shooting from the hip. But this is something
2 that could be calculated and provided if you'd
3 like to know the exact amount.

4 Q Now, what would happen to a leak --
5 well, let's go back to the beginning of the
6 operation, if you had a leak or spill of material
7 in the process area, what happened to it?

8 A You have to tell me what time you're
9 talking about.

10 Q Let's start 1968?

11 A If a tank leaked in 1968 --

12 Q In the process area now.

13 A In the process area, I would say at
14 that time there was largely crushed rock or slag
15 of various fills, you know, that had been brought
16 in to raise the elevation of the facilities by the
17 prior owner.

18 Q So whatever spilled would just simply
19 go down into the ground?

20 A Well, which wasn't picked up, right.

21 Q You say you installed the asphalt
22 aggregate or the concrete over time through the
23 operation?

24 A Yes.

1 Q It wasn't all done at once?

2 A No.

3 Q Do you have any record that would
4 indicate when particular areas were covered with
5 asphalt or otherwise covered?

6 A I would expect we could go back and
7 kind of pinpoint that with some accuracy. I don't
8 know.

9 Q We'll be asking you to do that. Have
10 you had occasion to study the characteristics of
11 the soils that are in the area, let's break it
12 down first to the process area.

13 A Well, again, I kind of have to assume
14 what you mean or what your intent --

15 MR. RUNDINO: Don't assume. If you
16 don't understand the question, just say so.

17 BY THE WITNESS:

18 A Well, see the word study to me means
19 something else, I mean I never studied it, I'll
20 put it that way, as I would study sociology, for
21 example. But --

22 BY MR. MCPHEE:

23 Q You know the characteristics of the
24 soil?

1 A Well, I would sometimes be aware of
2 digging a foundation and what there would be, you
3 know, in that.

4 Q By your observation, you have some idea
5 of what kind of soil underlies the area, correct?

6 A I would say that I never saw an actual
7 soil, it was always fill.

8 Q But in answer to my question, you do
9 know what kind of material underlies the sump
10 area, right, or the process area?

11 A My observation is that the material has
12 been fill material, as I previously stated, it was
13 --

14 Q It isn't clay, for example?

15 A No,.

16 Q It's some kind of aggregate?

17 A Right.

18 Q And the grain size would be larger than
19 sand, correct?

20 A Generally.

21 Q And would that be true also of the rest
22 of the area that you own out there?

23 A Well, of course I've observed
24 excavations where we put up a levy around T-20 and

1 T-22, and there I observed sand.

2 Q Okay. Now, you talked about -- well,
3 let's stay with the process for a bit. You
4 generally maintain pretty tight control over the
5 operations at the plant, right?

6 A I don't know what you mean by that.

7 Q Well, during the periods that you lived
8 in Gary, you were there between a half and
9 two-thirds of the time, wasn't that your
10 testimony?

11 A Right.

12 Q And I would assume while you were there
13 as president of the firm you maintained some
14 degree of control over the operations that took
15 place there?

16 A Well, yes, of course.

17 Q And while you were at the plant, and if
18 you were at the plant, then by report of your
19 managers you would know if there were any spills
20 or leaks in this area?

21 A Generally, yes.

22 Q It was not an uncommon occurrence for
23 there to be spills or leaks from the process area.

24 MR. RUNDINO: I'll object. Can you

1 put a time frame on it.

2 MR. MCPHEE: We've been talking
3 about the period I've just been discussing,
4 which is from 1968 to '74.

5 BY THE WITNESS:

6 A You're asking me if spills were common
7 or uncommon in that period, but that's a
8 subjective thing, in all honesty --

9 BY MR. MCPHEE:

10 Q We'll do it day-by-day. Did you keep
11 any kind of records that showed when there was a
12 spill of materials?

13 A We had, as I recall, an operators log.

14 Q In 1968?

15 A Well, in '68 we weren't even operating.

16 Q When did you start operations then of
17 the treatment part?

18 A As I said, I think it was in the early
19 '70's.

20 Q You started treating pickle liquor in
21 the early '70's?

22 A Yes. We may have started as early as
23 very late '60's, but --

24 Q Well again, I assume there are records

1 that would reflect those operations?

2 A I would think so.

3 Q During the time that you were there,
4 can you recall any incidents in which there were
5 leaks of material or spills of material from the
6 process tanks F-1 and CB-3?

7 A Well, now, F-1 was installed years
8 later, that was installed about --

9 Q Let's go back to CB-3 then.

10 A That was installed when -- '83 or '84,
11 that's maybe 14 years later.

12 Q Well, what kind of vessel were you
13 using up to that point, only CB-3?

14 A Well, CB-3 was installed and used for
15 manufacture of ferric chloride.

16 Q That's what I'm asking.

17 A I thought you were talking about
18 neutralization.

19 Q No, we've been talking all along here
20 now about the pickle liquor treatment operation
21 where you're making ferric out of ferrous, I don't
22 think there have been any questions yet about the
23 disposal.

24 A When you say treatment, I tend to think

1 of treatment of disposal and I'm trying to
2 remember what was going on. I'm sorry if I --

3 Q You refer to it as recycling, we tend
4 to view it as a treatment process. But be that as
5 it may, with respect to the --

6 A Well, could you repeat the question.

7 Q Right. You've said now that F-1 was
8 installed sometime? 1983, is that correct, or
9 '84?

10 A Somewhere in that period, yes.

11 Q Was there a tank in use for the same
12 function prior to that, or series of tanks?

13 A Yes.

14 Q Was it a series or just one tank?

15 A We had a number of them.

16 Q Why did you replace them?

17 A Well, we mainly did it for better
18 production, higher production rate, which, you
19 know, lessens our manpower requirements.

20 Q You say higher production, you mean in
21 the sense of increased volume?

22 A Yes, the ones prior to F-1 and CB-3
23 were smaller.

24 Q And there would be other reasons for

1 replacing the two, right, for example corrosion
2 that resulted in leaks?

3 A Well, the size is a reason of itself.

4 Q I understand that, but I'm asking you
5 if those --

6 A If you ask the question did the former
7 reactors develop a leak or become worn or
8 something, the answer is yes.

9 Q And where would that material go to
10 when it leaked out of the tanks?

11 A Well, it would go in the ground, but
12 then you're talking about quantities, that
13 material would be pumped out of the tank and into
14 another tank.

15 Q But the material that went into the
16 ground wouldn't be recovered, would it?

17 A Again, it depends on the quantity.
18 Quantities were pretty small, you know, with the
19 operators there all the time the nature of the
20 leaks is that you can empty out the tank.

21 Q Assuming you don't have something like
22 a failure of a weld around an inlet or intake to a
23 tank, correct?

24 A Well, I don't recall any -- what I call

1 major failures.

2 Q You don't recall any?

3 A No. I recall being advised of some
4 leaks developing, and -- but here we're just
5 talking about a few gallons, you know, like less
6 than ten, perhaps or less than a hundred. We're
7 not talking about terms of massive leaks or tanks
8 rupturing or things like that.

9 Q Well, pickle liquor isn't just ferrous
10 chloride, is it?

11 A Well, it is when you're making ferric
12 chloride.

13 Q What I'm asking you is when you get
14 ferrous chloride from a steel plant where it's
15 been used to treat steel, it not just iron and
16 chlorine in there, correct?

17 A No, it has variables of free acidity.

18 Q And other materials as well, right?

19 MR. RUNDINO: Are you asking for a
20 chemical analyses of the pickle liquor?

21 MR. MCPHEE: That's what I'm looking
22 at, right.

23 BY THE WITNESS:

24 A We have those on file, yes.

1 BY MR. MCPHEE:

2 Q But in answer to my question, you know
3 that there are metals other than iron present in
4 pickle liquor?

5 A Yes.

6 Q Chromium for example?

7 A Yes.

8 Q Cadmium?

9 A No.

10 Q Not cadmium?

11 A Well, not significant.

12 Q You say not significant. What do you
13 mean by that?

14 A Well, I mean that by and large we paid
15 for our liquor.

16 Q Getting back to my question, what do
17 you mean by significant?

18 MR. RUNDINO: Just answer the
19 question. What do you mean by significant?

20 BY THE WITNESS:

21 A Significant would be that level that
22 would present problems for us.

23 BY MR. MCPHEE:

24 Q Meaning what?

1 A Well, let's say that the sewage plant
2 would, after using our ferric chloride, would want
3 to deposit the solids from their operation onto
4 farmland, then there would be maximum allowable
5 quantities of various metals that that would
6 stipulate, and we had to stay below that.

7 Q Do you have any idea what those levels
8 might be, for example, for chromium?

9 A I wouldn't want to guess at that
10 offhand.

11 Q So you say you don't know of any large
12 leaks or discharges into the process area is that
13 correct? By large now, I mean on the order of a
14 thousand gallons or more?

15 A I'm trying to think.

16 Q Let's break it down in time frames,
17 let's say '68 to '74?

18 A I don't recall any, no.

19 Q How about in the last five years?

20 A We had some reports of spillage.
21 Whether they were more or less than a thousand, I
22 wouldn't say.

23 Q When you say we had some reports, are
24 you referring to yourself now?

1 A Yes.

2 Q And these reports were at your
3 instance.

4 In other words, you requested the plant
5 manager to report that though, incidents of that
6 sort?

7 A I mean it would be a policy that they
8 would report any problems to me, and any
9 observations of an unusual nature, and I'm sitting
10 here trying to think of any instance where they
11 might have reported an incident where there would
12 be a substantial leak, you know, which as you
13 define as over a thousand gallons.

14 That I just can't recall any at this
15 time that I would define as being over a thousand
16 gallons.

17 Q Would these reports be written reports?

18 A Oral, oral as a rule. There were some
19 written ones.

20 Q And the written report would be written
21 under what kind of circumstances?

22 A Be a letter or memo to me describing
23 the incident.

24 Q Was there any policy --

1 A We had a policy of any time there was
2 an accident which involved loss of property, real
3 or potential loss to personnel, you know, to
4 report that and also try to identify why it
5 happened and what could be done to avoid that in
6 the future.

7 Q Those documents still exist?

8 A Yes.

9 Q Where?

10 A Well, they would be in the files.

11 Q In the files of Gary or in the files at
12 St. Louis?

13 A Well, if they sent it to me they would
14 be in Mission, Kansas. If for some reason we
15 didn't get them, then they would be in the
16 duplicates, which are either in St. Louis or in
17 Hammond.

18 Q There are still -- when you say in
19 Hammond, now, where in Hammond would the records
20 be?

21 A That's at the home of the former
22 dispatcher, Ms. Tanses.

23 Q Are there any records currently at the
24 site?

1 A I don't consider them significant, or
2 we didn't -- I'll put it that way.

3 Q Did you remove all the records from the
4 site?

5 A Well, I instructed them to remove any
6 records that they felt were relevant or valuable.
7 Now, we've got what I would call, oh, maybe pump
8 part lists or vendor catalogs or just sort of a
9 debris that they didn't feel was of any
10 significance that is still there.

11 Q That meeting in December we asked you
12 to keep track of those records. Are they all in
13 one spot, none of them discarded?

14 A That's right.

15 Q Now, what would happen to material --
16 let's go to the period of time when the process
17 sump came into use. What would happen to material
18 that was placed in the process sump -- or that was
19 leaked or spilled in the process sump, I should
20 say?

21 A Well, there were two cases. One case,
22 you know, and this is what I'm going by as policy,
23 if for any reason there was a line break or what
24 you'd call a spill that you could catch, you know,

1 going into the process sump, and the concentration
2 was such that it was reuseable, they would simply
3 pump it out into our process equipment or pump it
4 back into the process equipment.

5 On the other hand, if it was a very,
6 very small quantity, and the sump happened to be a
7 high level, you know, from rain water or whatever,
8 that material would be neutralized.

9 Q You've used the expression gland water.
10 What was the ph. of that material, do you recall?

11 A Well, during this period I referred to
12 when we kept accurate records, the ph. was
13 between 5 and 6.

14 Q And were the people being especially --
15 your plant people at that point being specially
16 careful to make sure there weren't any leaks out
17 of the packing gland?

18 A This was speculative. The gland water
19 was something that we watched a lot in that if it
20 was not adjusted properly early, they either
21 dilute our product and cost us a lot economically,
22 or we would lose product and cost use
23 economically, so it was something that we, by
24 policy, we watched closely and kept after.

1 You're asking me to say whether this
2 was -- they were there more or less careful at
3 that particular period, and of course I suppose
4 keeping a record would tend to make them more
5 careful, but by that time they knew the plant was
6 shutting down, so I've speculated all I can on
7 that subject.

8 Q Okay. What would happen to a quantity
9 of material that was not, I guess you'd say
10 recoverable, that was dumped into the process sump
11 through a leak or a spill?

12 A Well, I already said that.

13 Q I missed it.

14 MR. RUNDINO: Just answer the
15 question. I don't think it was clear.

16 BY THE WITNESS:

17 A If -- yes, if the nature of the
18 material was so small or so diluted that it was
19 not recoverable, then that material was
20 neutralized.

21 BY MR. McPHEE:

22 Q By doing what?

23 A Either with lime or with caustic,
24 sodium hydroxide.

1 Q Most often lime though, right?

2 A Most often by lime.

3 Q It was neutralized, then what was done
4 with it?

5 A Then it was pumped to the -- what
6 period are we talking about?

7 Q Let's just say the last five years?

8 A That would be basin 19.

9 Q So the sump liquid, whatever happened
10 to be in the sump at the point where it got full,
11 if it was not a recoverable amount, would have had
12 some lime tossed into it and pumped over to the
13 area around tank 19, right?

14 A Well, it was more than tossing in lime,
15 they also circulated to mix it up, checked the ph.
16 and all of that.

17 Q But the ultimate result was that this
18 material, whatever ph. it happened to be when
19 they were done circulating and adding lime and so
20 forth, would be discharged into Pond 19, correct?

21 A Right.

22 Q Looking at Pond 19 now, there's a dike
23 indicated around number 19. When was that
24 installed?

1 A Well, that dike, in substance it was
2 always there, because of the railroad -- well,
3 what they call a two sides. The dike between tank
4 22 and tank 19 was built up or raised probably a
5 couple of years ago, or a year ago.

6 Q But effectively since you've had the
7 property, there's been a basin around number 19,
8 right?

9 A Right.

10 Q And it's just gotten deeper in recent
11 years -- or I should say that the height of the
12 containment dike around there has gotten higher in
13 recent years?

14 A Well, the -- this area around the -- as
15 I said, between tank 22 and tank 19 was raised,
16 but I think there were a few places that were
17 raised as late as this summer, the summer of '85.

18 Q You say it was raised, all those areas
19 were raised at your instance?

20 A Yes.

21 Q Why did you direct that those areas be
22 raised?

23 A Well, the State of Indiana complained
24 that it was not adequate freeboard, brought this

1 to our attention.

2 Q And what conditions that you're aware
3 of gave rise to the feeling on the State's part
4 that the freeboard was inadequate?

5 A I think they came when there was
6 probably a lot of rainfall and, you know, I accept
7 their report in that regard.

8 Q Well, perhaps one of the problems was
9 liquid around the tank 19 were actually washing
10 over the area between 19 and 22 and into the area
11 around 22?

12 A Yes, there was an incident at that
13 time, and this is all from the reports that I've
14 had, that they were in the process of building up
15 this roadway and, combination roadway and levy
16 between 22 and 19.

17 Q That's the line that kind of intersects
18 the rectangle that intersects the cooling tower?

19 A Yes, it actually goes near or uses this
20 cooling tower basin as part of its border, I'll
21 put it that way, the border of the levy.

22 Q You wouldn't maintain, would you, that
23 the material that was in the area around 19 was
24 just rainwater?

1 A No.

2 Q What other materials would be present
3 there?

4 A Well, there was the -- what I call
5 rainwater that had been contaminated with the
6 neutralized gland water from the process area.

7 Q It would also be contaminated with
8 spills or, as you say, breaks from pipes that
9 would have resulted in spills?

10 A Again with the proviso that if it was a
11 significant break it was recovered, if it was not,
12 it was --

13 Q In all cases?

14 A What?

15 Q In all cases?

16 A Do I know if in all cases?

17 Q Correct.

18 A I don't know.

19 Q So it's possible --

20 A Any way, the third thing, to complete
21 your question, the third thing was spillage from
22 tank 19.

23 Q You say spillage, where would that have
24 come out of?

1 A The holes in the bottom of tank 19.

2 Q Holes in the bottom?

3 A Yes.

4 Q And do you know how those holes got
5 there?

6 A I presume from the corrosive
7 atmosphere.

8 Q And the corrosive atmosphere was
9 occasioned by the placing of this treated material
10 from the sump into the area around tank 19?

11 A No, I would not think that the treated
12 material would corrode it.

13 Q Have you ever done any ph. testing on
14 the treated material?

15 A Certainly.

16 Q What kind of result did you get?

17 A Well, I've stipulated that it should be
18 8.

19 Q You say you've stipulated that it
20 should be 8. In what context did you stipulate
21 that?

22 A Instructions, you might say, oral,
23 verbal, I mean oral or written.

24 Q Those were instructions to your

1 employees, correct?

2 A To the manager.

3 Q But I ask again if you've done ph.
4 testing of the material that's in that area around
5 tank 19?

6 A I have not done it personally.

7 Q Have you instructed that it be done in
8 your capacity as president of Conservation
9 Chemical?

10 A Yes.

11 Q What were the results of the ph. tests
12 that you did?

13 A Well, I've not gotten any written
14 answers.

15 Q What were the results that were
16 reported to you, sir?

17 A Well, there was a period this spring or
18 summer when they reported the results were below
19 8.

20 Q And how far below 8?

21 A I can't say. We don't have a ph.
22 meter, we use --

23 Q Have you got ph. paper?

24 A Ph. paper.

1 Q And that produces a color, either pink
2 or blue, that you can match against the standard
3 and know what the ph. is approximately, correct?

4 A Yes.

5 Q And there was a number given to you,
6 I'm sure, by whoever did the ph. testing. Can
7 you recall any of those numbers, sir?

8 A No number.

9 Q Did they say low?

10 A Low.

11 Q Low to you would mean what?

12 A Below 8. I'm serious, low is below 8.

13 Q Well, let's just go to some of these
14 conversations. Who did the ph. testing?

15 A Well, at the basin?

16 Q Yes.

17 A I don't -- under the instructions of
18 the manager, I don't know who he asked to do that,
19 probably the operators.

20 Q Well, then, it would be your assumption
21 that whoever did the testing reported some value
22 to the manager, correct?

23 A Right.

24 Q And who was the manager that you spoke

1 to in connection with this particular exchange?

2 A Well, we only had two managers in 1985.

3 Q Who was it?

4 A Mr. Poisel and Mr. Grimmett.

5 Q Did Mr. Poisel ever report a number to
6 you?

7 A I don't recall any.

8 Q Did Mr. Grimmett ever tell you a
9 number with respect to the ph. of the material he
10 tested in that basin?

11 A I don't recall any.

12 Q And by your -- the expression "low" in
13 connection with the reports of a ph. level in
14 that basin, means less than 8?

15 A Yes.

16 Q Does it mean less than 7?

17 A Means less than 8.

18 Q Does it mean less than 7 too, sir?

19 A Well --

20 Q I would assume -- let me ask it this
21 way. If the ph. --

22 A Zero is low, yes, but 7 is low.

23 Q Is 6 low?

24 A Yes.

1 Q In connection with this particular
2 exchange with either Mr. Poisel or Mr. Grimmett
3 or both, I would assume if the ph. level was 7.5,
4 you would not be terribly concerned about that, is
5 that correct?

6 A Well --

7 MR. RUNDINO: Let me object, it
8 calls for speculation. If he didn't know
9 what the ph. level is, you don't know what
10 his reaction was.

11 MR. MCPHEE: Can I have the question
12 back.

13 (Pending question read.)

14 BY THE WITNESS:

15 A If you delete the word terrible, I
16 would say yes, I would be concerned. The reason
17 being is that if you don't have that ph. up to 8
18 in time the -- and you've got ferrous ions, then
19 in time with -- if you've got ferrous ions, in
20 time the material oxidizes and the ph. drops,
21 this is in a time over days, you know, weeks.

22 BY MR. MCPHEE:

23 Q Have you ever had a report of the ph.
24 level in that basin, sir has anybody ever given

1 you a number as to the ph. that was present in
2 that basin?

3 A Well, you know, just to get right to
4 the point, I've since learned there's
5 circumstantial indications that our Part B
6 application had a page prior to the drawing of the
7 basin 19 sketch, the engineering drawing of the --
8 the page prior to that in Part B had a ph. of
9 1.8. That page is not identified, you know, where
10 the sample was taken.

11 Q Who prepared the plan, sir, who
12 prepared that plan?

13 A The technical work was done by Mr.
14 Connolly and a Mr. Habich.

15 Q That's Dave Connolly?

16 A Yes.

17 Q He's an employee of Conservation
18 Chemical?

19 A An employee of a sister company,
20 Midland Resources, and I've forgotten the man's
21 name, he was of Indian derivation.

22 Q That was for your first Part B
23 submission?

24 A I presume that both of those analysis

1 showed up in both Part B's, I presume that.

2 Q You signed the Part B though, right?

3 A Yes.

4 Q You reviewed it before you exhibited
5 it, right?

6 A Yes.

7 Q And the number that was reported on
8 that page that you say can't be identified is 1.8,
9 correct?

10 A Correct.

11 Q Now, where are the holes in tank 19?

12 A Well, much of the roof is gone.

13 Q But the holes we're concerned about
14 here when we were talking about the content
15 perhaps of tank 19 having leaked out --

16 A That would be on the west side.

17 Q And that would be at the bottom, right?

18 A At the bottom.

19 Q And the tank essentially sits in
20 liquid, doesn't it?

21 A Much of the time.

22 Q And the holes are essentially at the
23 water -- at the level where the liquid in there
24 settles in the tank, correct?

1 A Correct.

2 Q And what's inside that tank, sir?

3 A Right now?

4 Q Right.

5 A As far as I know, it what was always
6 there, which is organic, that's a solid at room
7 temperature and a liquid at probably 180 and
8 above.

9 Q There's oil in there, isn't there?

10 A petroleum product, right?

11 A That's better.

12 Q There's a petroleum product that was
13 extracted somewhere along the line from crude oil?

14 A We don't know where it came from.

15 Q It was there when the refinery was
16 purchased right?

17 A Right.

18 Q Not all of it was there, you added oil
19 to that tank over time, didn't you?

20 A Let's see, this is a very important
21 matter, and I'd like you to start over again if
22 we're going to talk about tank 19.

23 Q I just want to know, did Conservation
24 Chemical add any oil to that tank during the

1 period of time that you owned the site?

2 A We added oil to the tank, that's
3 correct.

4 Q And also in that tank there's PCB's,
5 isn't there?

6 A Yes.

7 Q You got your own testing and you got a
8 value for PCB's present, didn't you?

9 A Yes.

10 Q And there have been leaks from that
11 tank, haven't there?

12 A Yes.

13 Q Substantial, meaning more than 1000
14 gallons?

15 A Well, I would call it substantial even
16 if it wasn't a thousand gallons in the light of it
17 having PCB's in it.

18 Q And on several occasions your employees
19 have used various devices to suck substantial
20 quantities of oil that have leaked into the ponded
21 area off of that and pump it into other tanks,
22 haven't they?

23 A Well, we, years ago we emptied all the
24 liquids, what you call oil, which is a liquid at

1 room temperature, from tank 19.

2 Q You emptied the entire tank?

3 A Of its oil content, yes.

4 Q And where did that material go?

5 A Tank 22.

6 Q So the material in 22 then is a
7 combination of oil and -- or that you placed in
8 there is a combination of oil and this asphalt
9 material that you testified about earlier?

10 A Plus what you people put in there.

11 Q Right, and we did that in order to get
12 the -- let's not get into that.

13 MR. MCPHEE: Do you want to take a
14 break.

15 (Short recess.)

16 BY MR. MCPHEE:

17 Q Mr. Hjersted, when did the process
18 sump start getting used in the way we've been
19 talking about here?

20 A I'd say sometimes -- I don't know,
21 sometime in the '70's.

22 Q Early '70's?

23 A No, it would be -- I'm guessing,
24 probably the the mid '70's but I --

1 Q Have you got any document that would
2 reflect when that process began or the process
3 sump started to be used that way?

4 A I don't know. I would expect we would
5 have, but I'm not certain.

6 Q Are there written policies reflecting
7 the procedures to be followed in reporting to you
8 spills of material at the site?

9 A I don't know that it would be in
10 writing, just something that's understood.

11 Q I would assume that if the plant
12 manager is not told what the policy is he can't
13 understand what it was. How would you communicate
14 a policy with regard to reporting spills to the
15 plant manager, who I assume would be the person
16 that you would talk to?

17 A Well, if you're talking about the early
18 days, that would be an oral communication, the
19 later days, I think that might be covered in some
20 of our procedures, you know, in various
21 memorandums.

22 Q Do those documents still exist?

23 A To my knowledge, we've not destroyed
24 any document of that nature.

1 Q You don't know exactly when the process
2 started being used to collect this material that
3 spilled on the ground?

4 A Oh, well, see, your question was used
5 as it is, you know, which was going to basin 19, I
6 thought that was your question, I misunderstood
7 it.

8 Using the process per se, that would
9 start in the early '70's, to my knowledge, just as
10 a recollection.

11 Q What would have been done with the
12 material at that point?

13 A Early '70's, as I recall, the basin --
14 the pie basin was used.

15 Q But as the material that had either the
16 lime or the --

17 A The neutralized.

18 Q Would have been pumped to the pie
19 shaped basin?

20 A Yes.

21 Q Now, there were several functions, I
22 assume, for adding lime to this material, is that
23 correct several reasons for doing that, one being
24 to reduce -- to increase the ph. of the material?

1 A Well, that's the only reason I know of.

2 Q Would it also have the effect of
3 precipitating metals in solution out?

4 A That's understood, that's why you raise
5 the ph., is to precipitate the metals.

6 Q So that when the lime settled out of
7 the fluids that were pumped backed into the pie
8 shaped basin, for example, the metals that were
9 contained in the solution would drop out and
10 deposit it in the bottom of the basin?

11 A Well, you got some drop out in the sump
12 itself of precipitants, and of course similar to
13 the receiving basin.

14 Q And that would early on be the pie
15 shaped basin and later on the basin around tank
16 19?

17 A Right.

18 Q Now, what would happen to the material
19 that precipitated out in the sump?

20 A That was cleaned out periodically.

21 Q And placed where?

22 A Taken to a landfill.

23 Q Would it be placed into the pond around
24 T-19 or the pie shaped basin?

1 A Well, I don't have any knowledge of it
2 being placed in anything but going to an off-site
3 fill.

4 Q And when did you stop sending that
5 material to an off-site fill?

6 A We had not stopped, whenever we needed
7 to clean it, that's what was done, to my
8 knowledge.

9 Q Now, what's the volume of the process
10 sump, do you know?

11 A Well, I could calculate rather quickly,
12 but do you --

13 Q 5,000 gallons?

14 A About 25,000.

15 Q 25,000 gallons?

16 A Yes, that's just an offhand figure.

17 Q And would most of the lime material or
18 the precipitates be carried off to the pie shaped
19 basin or T-19 when it was being pumped as opposed
20 to settling out into the process sump?

21 A I couldn't speculate on that.

22 Q You must have some rough idea, half,
23 more than half, less than half?

24 A I think it depends on the degree of

1 where the sludge level is. Nearly all would
2 precipitate and settle out as long as the sludge
3 level was low.

4 Q But if the sludge level was high, it
5 would go to the pie shaped pie shaped basin or
6 T-19.

7 A Right.

8 Q You've talked about the disposal site
9 of the pickle liquor operation. Can you explain
10 how that works for me?

11 A The disposal?

12 Q Yes.

13 A I've already done that today.

14 Q I don't know if you have.

15 MR. RUNDINO: You mean complexing?

16 BY MR. McFEE:

17 Q We've been talking about treatment for
18 starters. when I say that I mean bringing in
19 pickle liquor and changing it into the ferrous
20 form and selling it.

21 Now, as far as the complexing and
22 disposal of this material on site, could you
23 describe for me how that worked?

24 A The disposal of pickle liquor?

1 Q Right.

2 A Beside -- you're talking about
3 non-recycling techniques, and there were three --
4 well, two basic categories. One where we were
5 either acting as brokers or transporters and would
6 take the liquor to an off-site facility. And the
7 other one was where we'd neutralize it with lime
8 and took the sludge to an off-site facility, like
9 a landfill.

10 Q And the third?

11 A Well, I realize -- that's the two
12 categories. There were several off-site
13 facilities.

14 Q Well, it's my understanding from
15 talking with your former employees that other
16 things were done with this material as well, that
17 is the material was precipitated and that the
18 precipitate was placed in the tank 20, is that
19 correct?

20 A Well, during this period we used --
21 part of this period we used tank 20 as a holding
22 tank to give -- improve our scheduling of trucks
23 and availability of the off-site receiver, so
24 there was a period when tank 20 was used as a

1 receptacle for the sludge, the neutralized liquor,
2 and then the material went from T-20 into the
3 truck, tank truck.

4 Q This was the precipitate now?

5 A It was the sludge, you know, the
6 precipitate, but in kind of a slurry form.

7 Q This was pumpable?

8 A Yes. It actually flowed by gravity.

9 Q It would slump, in other words?

10 A You could pump it, but in most cases we
11 just let it come out, it was a six inch line, into
12 the receiving truck.

13 Q On how many occasions would the
14 contents of tank 20 be placed into either the pie
15 shaped basin or some other place on the site?

16 A I couldn't answer that.

17 Q But it did happen, to your knowledge?

18 We've been told by Don Grimmett that at
19 least on two occasions that the contents of tank
20 20 were simply taken over into Pond 19 and simply
21 disposed of, is that true?

22 A I would not contest that.

23 Q Now, back behind tank 20 is an API
24 separator box, right?

1 A Right.

2 Q That's basically a swimming pool sort
3 of construction?

4 A It's a concrete box set in the ground,
5 it's an API separator made to certain
6 specifications by the America Petroleum Institute.

7 Q But for the rude layman, that's
8 basically a concrete box set in the ground,
9 correct?

10 A Yes, with a lot of partitions in it,
11 yes.

12 Q And material from your operations that
13 generate sludge ended up in that box too, didn't
14 they?

15 A Yes.

16 Q And these sludges would have had the
17 metals in them that we talked about before?

18 A Yes.

19 Q Chromium, copper, beryllium, other
20 sorts of materials?

21 A I couldn't speculate.

22 Q But you did sampling on some of this
23 material in the past, didn't you, so you have some
24 idea of what metals were present in the material?

1 A Certainly.

2 Q You wouldn't have to speculate.

3 A Well, you've raised the question, like
4 the beryllium, as I recall, that was handled
5 separately, and it was not allowed to go into the
6 system. In other words, that was treated
7 separately, taken to a separate off-site facility
8 for disposal of the neutralized material. I don't
9 think we --

10 Q Would it be your testimony that none of
11 that material ever ended up at anyplace on-site?

12 A The beryllium?

13 Q Right.

14 A That's right, that's my knowledge.

15 Q But with respect to the API separator
16 box, there were sludges placed in there, and those
17 sludges were cleaned out of that box on perhaps
18 more than one occasion and placed in the pie
19 shaped basin, correct?

20 A I don't think it's ever been cleaned.

21 Q To your knowledge?

22 A Well, to my knowledge, yes, it's never
23 been cleaned. I think it's still got the oil that
24 was in there in the beginning and some of the

1 spillages of these sludges.

2 Q Were there any policies about how that
3 particular piece of equipment at the site was
4 supposed to be used by you?

5 A We never really put it into service.

6 Q You had plans to use it?

7 A Plans that were never implemented.

8 Q What were those plans?

9 A Well, it was assumed that the function,
10 valuable function for this facility would be to
11 recycle off spec oils, and that this separator box
12 could be used as a sort of a pretreatment.

13 Q That was your speculation, right?

14 A Yes. But when we solicited business,
15 we didn't get the response, and then when we were
16 wanted, when the same people said come and get it,
17 we were too involved in this pickle liquor work.

18 Q What other kind of materials did you
19 put in the pond, or into the pie shaped basin?

20 A Oh, to my knowledge, there was just the
21 material that was left there by the original
22 owners, and this neutralized pickle liquor and
23 possibly complexed acetic plating wastes.

24 Q That would be things that would include

1 like chromic acid, for example?

2 A Yes, but here I'm speculating, I said
3 it could have happened.

4 Q Why do you say it could have happened?

5 A Because in the 18 years that we were
6 there, this is one of the things that we did.

7 Q So this complexing operation we're
8 talking about, was that a disposal operation?

9 A Except for the beryllium, I don't have
10 any remembrance of that with respect to this pie
11 basin.

12 Q With respect to the complexing
13 operation that you discussed briefly before, was
14 that a disposal operation or a recycling
15 operation?

16 A The complexing was strictly disposal.

17 Q And the process that you used, adding
18 lime or whatever you added to the complex material
19 would have gone into tank 20?

20 A Right.

21 Q And from there it would have been
22 cleaned out and placed into the pie shaped basin?

23 A Oh, no, as I said, at the bottom of
24 this tank 20 was a six inch line which came up and

1 over and would drop into the receiving tank
2 trailer.

3 Q But if the contents of tank 20 had been
4 placed into the pie shaped basin, you couldn't say
5 one way or the other?

6 A I just said I don't know whether it
7 was. That was not the normal or the prescribed
8 route of the process.

9 Q Which was?

10 A I just got through saying, we would do
11 our complexing, neutralization in the process
12 area, pump it to tank 20.

13 Q Into tank trucks and take it off-site?

14 A And into tank trucks as they were
15 available.

16 Q Why was tank 20 then emptied out into
17 the pie shaped basin, on what occasion did that
18 occur?

19 A I said I don't know that it was. You
20 said you knew that it was.

21 Q Very well. We were talking a little
22 earlier about one incident, or possibly more,
23 where liquid from the area around tank 19 washed
24 into the area around tank 22.

1 Can you recall the details of that?

2 A Yes, that was covered in the incident
3 reported by the State of Indiana, Board of Health.

4 Q Did anybody from Conservation Chemical
5 report that to the State or was it just because
6 Mr. Cleaton or one of the other inspectors
7 happened to be present that that became an issue?

8 A I don't recall that particular detail,
9 you know, how it came about, whether they were
10 called in about it or whether they just happened
11 to notice it, I don't recall that.

12 Q Do you happen to know if any oil that
13 was on the top of the area around tank 19 also
14 washed over into the area around 22 at that point?

15 A Well, I certainly don't recall being
16 advised of that, I looked at the area, and I can't
17 see any evidence of it.

18 Q What kind of area is the area around
19 tank 22, as far as the zoology of the diked area?

20 A I'd characterize it as being appearing
21 clean, all the vegetation, trees growing up, some
22 evidence of, you know, precipitants there.

23 Q Precipitants now, are you talking about
24 the kind of material that came out of the process,

1 the pickle liquor treatment process?

2 A You identify them as not natural soil.

3 Q Well, would you have reason to believe
4 that the precipitants you're referring to are the
5 same kind of material that was discharged into the
6 area around tank 19?

7 A I wouldn't want to speculate. I mean
8 it's very easy to analyze it.

9 Q Do you have any idea of how much
10 material might have been spilled over the top of
11 that dike between 19 and 22?

12 A I was advised it was very minor, you
13 know.

14 Q Is that minor in an absolute sense or
15 minor in a relative sense?

16 A I'd think that's a verbiage that I
17 used.

18 Q Does that mean it was a large quantity
19 of a low concentration material, or a small
20 quantity of a high concentration material?

21 MR. RUNDINO: Or a low concentration
22 of a low concentration material, or rain
23 water.

24 BY THE WITNESS:

1 A It's my understanding of the incident
2 that it was of not great -- not any significant
3 environmental impact, I'll put it that way.

4 That is there's no evidence of oil over
5 there that I've observed. I understand that it
6 was during the spring rains or, you know, the
7 first flush of spring when there was a lot of
8 melting water, or melting ice, and a lot of rain
9 water. But as I said, I hate to speculate more
10 than what I've just told you, and --

11 BY MR. McPHEE:

12 Q Going back to the process, how often
13 did you pump that out, take the sludge off and
14 take it to a landfill?

15 A How often did we clean the --

16 Q The process sump.

17 A I'd say it was an infrequent
18 occurrence, and I don't have any recollection of
19 the frequency though.

20 Q What would be the triggering event, a
21 the fact that it was getting too full of sludge?

22 A That's right, where they wouldn't have
23 enough lime.

24 Q And how much volume would be needed?

1 A I think this is a matter of the
2 manager's judgment, you know, if he felt like he
3 didn't --

4 Q Well, would 5,000 gallons be enough?

5 A You're asking me to speculate what
6 would be convenient to a manager in his
7 operations.

8 Q Well, I'm asking you as president of
9 the operation, sir, and as the person who is
10 involved in the design of the plant and who
11 presumably has some fair knowledge of the way it
12 operated, what you would consider as a chemical
13 engineer involved in those circumstances would be
14 an adequate volume of space in the sump to
15 accomodate the leaks and the spills and the drips
16 and so forth that might come off the process while
17 it was operating?

18 A I would be hard pressed to at this
19 moment say what is the -- I would want to study
20 that, if this is a serious question, how many
21 gallons are required.

22 Q We talked quite a bit about the acetic
23 type material you brought onto the site. There
24 was also cyanide on there, correct?

1 A Yes.

2 Q And these were contained in the sphere
3 which was next to the process area?

4 A Yes.

5 Q Right adjacent to the acid materials
6 which were used in the process?

7 A Yes.

8 Q And a spill from the cyanide sphere
9 would go where?

10 A In to the process sump.

11 Q Which is acetic, correct?

12 A Some of the time.

13 Q And do you know what happens -- what
14 happened with that particular material, the
15 cyanide that you had present, if you spilled them
16 into an acetic environment?

17 A Yes, I've written to you about that on
18 numerous occasions.

19 Q What would the effect be?

20 A You'd form a highly insoluble cyanide
21 complex. There would be no evolution of gas.

22 Q Have you tried that, have you tested
23 that material?

24 A We got a license from the Bureau of

1 Mines to use that process as a disposal technique
2 in one of our sister companies.

3 Q That's not my question. Have you
4 tested by taking a sample of the cyanide in the
5 sphere and mixing with a sample of the material
6 that's used for the pickle liquor and see what
7 would happen?

8 A In -- well, the answer is no.

9 Q Now, the source of the cyanide is what?

10 A Metal finishing industry.

11 Q These are plating materials?

12 A Yes.

13 Q And so -- well, what would the
14 composition the cyanide liquid that you have in
15 there be?

16 A We have that in our application, as I
17 recall, it varies from a fraction to a percentage
18 to maybe as much as 2 percent.

19 Q Cyanide?

20 A Yes.

21 Q Other materials are present though too,
22 correct?

23 A Yes.

24 Q What are those?

1 A Alkaline earth metals and heavy metals.

2 Q What is an alkaline earth metal?

3 A Be like sodium or potassium, lithium.

4 Q And heavy metals?

5 A Primarily copper, zinc, nickle,
6 cadmium.

7 Q Chromium?

8 A Not to my knowledge.

9 Q Was this -- this was a plating material
10 now?

11 A That's my understanding, yes.

12 Q And you would buy it from companies
13 that did plating operations, correct?

14 A No, we wouldn't buy that.

15 Q People would pay you to take it away?

16 A Yes.

17 Q You would obtain it from companies that
18 did plating operations?

19 A Yes.

20 Q And I'd ask you kind of a general
21 question now, in correspondence to us in the past,
22 you've indicated that you would be going to obtain
23 reports from firms with which you dealt concerning
24 the kind of materials that were present in the

1 liquids and other materials that they gave you for
2 disposal or treatment or storage at your facility,
3 is that correct?

4 A I wrote you a letter to that effect?

5 Q Sometime ago, correct?

6 A I won't deny it, but I don't recall it.

7 Q Did you obtain those kinds of reports
8 from each facility that you got material from?

9 A In what I call in the later years, we
10 did.

11 Q What would be the later years? Did you
12 do it in 1980, for example?

13 A I can't say, and I don't want to
14 speculate. I just don't recall.

15 Q Well, Mr. Hjersted, how much control
16 did you have over what happened between you and
17 the folks that you got materials from, whether you
18 paid for it or whether you picked it up and were
19 paid to take it away?

20 A To my knowledge, in the '80's, we never
21 were paid, we always paid.

22 Q That's not quite my question, sir. I'm
23 curious as to how much involvement you had on a
24 day-to-day basis with the transactions under which

1 you would enter into contracts with generators of
2 this material to take it off their facilities?

3 A To my knowledge, we didn't have any
4 contracts.

5 Q You never had contracts with any of the
6 generators of material that you brought on the
7 site?

8 A Say that over again, please.

9 Q You never had any contracts with the
10 generators of the material that you brought to the
11 site?

12 A Are you talking about pickle liquor in
13 the '80's? That's correct.

14 Q You never had contracts with them?

15 A I don't think so.

16 Q You had open purchase orders or some kind
17 of arrangement?

18 A I really don't know what kind of
19 document we had that covered that.

20 Q Well, who arranged the purchase of that
21 material?

22 A Mr. Kaiser. That was his department.

23 Q All cases?

24 A I'd say so, yes.

1 Q You never had any direct contact in the
2 sales side of things or the purchase side of
3 things with any of the generators?

4 A Well, see, we're just talking about
5 purchasing, and I don't recall any contacts that I
6 had in the '80's on purchasing of raw material.

7 Q Let's go to material that was not run
8 through what you characterized as recycling.
9 Let's talk about stuff that came in the site and
10 ended up there.

11 A What period are we talking about?

12 Q That's what I'm getting to. Okay.
13 Let's talk about 1980 to the present, was the only
14 business that you were engaged in there bringing
15 the pickle liquor to the site and treating it and
16 turning around and selling it as ferric chloride?

17 A The other business that we had was a
18 real nominal amount of brokerage which -- where we
19 would haul material to an off-site treatment
20 facility.

21 Q And none of the contents of tanks nor
22 the drums that are currently on site that are
23 sitting there at this time, for example the
24 chlorinated or non-chlorinated solvent or the oils

1 in tank 19 or the drums sitting to the west of the
2 process area were brought on the site after 1980?

3 A That's my recollection. That's
4 correct.

5 Q Prior to that time, did you obtain any
6 kind of analysis of the materials that were
7 brought to the site that I've just described, the
8 contents of the tanks, the drums, that sort of
9 stuff?

10 A Well, we did, on some, we didn't on
11 others, like silicatet, no, we just were told it
12 was silicatet, period.

13 Q And as to the content of the drums, did
14 you get an analysis of those before you accepted
15 them?

16 A I don't have a recollection of that.

17 Q Any recollection you'd have would be
18 reflected from your records?

19 A What's that?

20 Q Any information you might have would be
21 reflected in the records that you have?

22 A That's right.

23 Q You don't have any personal
24 recollection of any dealings with any of the

1 generators of those materials?

2 A No.

3 Q With respect to the stuff that you
4 brought to the site for treatment, or recycling,
5 as you characterize it, did you get an analysis of
6 those materials from the generators?

7 A What period are you talking about?

8 Q 1980 on.

9 A Either we got it from the generators or
10 we took it ourselves, analyzed it ourselves.

11 Q For all the streams?

12 A Had it analyzed, I should say.

13 Q For all the streams you brought in?

14 A Yes.

15 Q Where would those records reside at
16 this point?

17 A We would have some of that at Mission,
18 we would have copies down in St. Louis or this
19 lady's house in Hammond.

20 Q Where does Mrs. Tanses live, do you
21 know?

22 A I don't have -- I've got that
23 information at my office, but I don't have that
24 with me.

1 Q Where is the location in St. Louis
2 where the records are?

3 A 10 Bremen Street.

4 Q In St. Louis proper?

5 A Yes, but to my knowledge you have had
6 all that stuff delivered to you and you've all
7 made copies of it.

8 Q Well, now, is any of the stuff that's
9 gone to St. Louis the records that were in the
10 office as opposed to the records that were in
11 those file boxes upstairs?

12 A My understanding is the stuff that went
13 to St. Louis was just what was upstairs, which
14 you already copied.

15 Q And the records that were in the office
16 are in Mrs. Tanses' possession?

17 A Right.

18 Q Have you ever run any analysis of the
19 material that's in the pie shaped basin?

20 A I believe so.

21 Q Do you recall the result of the
22 analyses?

23 A No.

24 Q Where would the documentation of that

1 analysis be?

2 A I think it's in Part B, I think that --
3 our Part B application, we submitted that.

4 Q You didn't submit the original document
5 though, that is the reports on which the Part B
6 was based?

7 A I don't think we did.

8 Q Do those documents still exist?

9 A I'm trying to run them down. You know,
10 actually I've asked for, you know, some
11 explanations of, you know, more background
12 information on these things.

13 Q Now, turning to the soils that underly
14 the site, we talked a little bit about the sand
15 that you've seen present there. What's underneath
16 the pond -- what kind of soils are present in the
17 area around Pond 19, to your knowledge?

18 A Well, I've never observed anything
19 there, I just -- just in basin -- T-22, I have
20 observed the sand.

21 Q You've never seen the bottom of tank
22 19?

23 A No.

24 Q Never seen the bottom of Pond 19, I

1 should say.

2 A No to both questions.

3 Q Now, at one point I believe you did a
4 set of calculations relating to what happened to
5 fluids that were put into the pond around 19 and
6 the other ponded areas in the site. Do you have
7 any recollection of doing that for the State?

8 A You mean this August of '85?

9 Q No, this was some time ago. Let's
10 reserve that until I get down to the document
11 itself.

12 Do you have any idea as between
13 evaporation and seepage out of the bottom of tank
14 19 how much of the material --

15 MR. RUNDINO: You mean basin 19.

16 BY MR. MCPHEE:

17 Q Basin 19, do you have any idea as
18 between seepage and evaporation, that material
19 that will be placed into basin 19, what the
20 distribution or disappearance of that material
21 would be?

22 A As to how much would evaporate?

23 Q Right.

24 A And how much would --

1 Q Seep into the ground.

2 A Go down, you're talking about water.

3 Q I'm talking about the liquid that's put
4 in there.

5 A Well, I would assume that a very heavy
6 residual type of organic being a solid or
7 semi-solid at normal temperatures would not drop,
8 you're just asking for my general knowledge. As
9 to how much of the water face would evaporate and
10 how much would sink, I'm not an expert on that. I
11 know that it goes both ways.

12 Q You do know that material does seep out
13 the bottom of that ponded area into the soil?

14 A I would think so.

15 Q And you know that water that falls in
16 the pie shape basin would probably seep out the
17 bottom of that as well, correct?

18 A Well, there again you've got a basin
19 that's -- yes, I would assume that some does.

20 Q And some also would seep out of the
21 bottom of the area around tank 22, correct?

22 A Yes.

23 Q Down into the soil, into the ground
24 water?

1 A Yes.

2 Q Going to the far side of the railroad
3 tracks, the right of way on the west side of the
4 property, in the course of the meeting we had on
5 December 20th, you drew a line of irregular shape
6 on that side of the tracks in connection with the
7 discussion we were having about the number of
8 surface impoundments that have been used by
9 Conservation Chemical over a period of time.

10 Would you consider that area to the
11 west side of the tracks to be a surface
12 impoundment?

13 MR. RUNDINO: I'll object. If he
14 thinks he knows what a surface impoundment
15 is, he can answer. It's a legal
16 definition.

17 MR. MCPHEE: It's an application of
18 facts to law, and I think we had a dispute
19 in this case as to whether or not that's a
20 surface impoundment. I'd like to know how
21 he characterizes that area to the west of
22 the tracks.

23 BY THE WITNESS:

24 A I'm coming to learn that surface

1 impoundment has a special meaning.

2 BY MR. MCPHEE:

3 Q What do you think it means?

4 A I think when it was used and how it was
5 used is important, I've learned that, you know,
6 the exact -- but --

7 Q Well, what's your understanding of the
8 effect of when a surface impoundment might have
9 been used?

10 A What's that?

11 Q What's your understanding of the effect
12 that the date that an area was used to store
13 liquid or to contain liquid material has on the
14 characterization of that area?

15 A Different legislations apply.

16 Q And as to kind of material that goes
17 into a body like that, what would your answer be?

18 A The kind of material that is in there?

19 Q Right, you said that's the other
20 characteristic.

21 A I would say there are two types -- I've
22 already said there are two types of material, one
23 is the organics from the refinery operation.

24 Q This is now on the west side of the

1 tracks you're talking about?

2 A Yes.

3 Q That area which is currently labeled as
4 the off-site basin?

5 A Right. And metal hydroxide sludges.

6 Q And those were generated by your
7 operation at Conservation Chemical, right?

8 A Yes.

9 Q Was there also copper sulfate in there?

10 A I have no knowledge of that, but --

11 Q Do you have any recollection of a
12 situation where a Mr. Cleaton came to your
13 facility one day and found a railroad tank car
14 sitting on the siding there discharging copper
15 sulfate into that area?

16 A No.

17 Q So we have the metal hydroxide sludges
18 which are on that side of the tracks, correct?

19 A Correct.

20 Q It's on the west side of the tracks.
21 How did those get there?

22 A Well, they were put there by the
23 Conservation Chemical.

24 Q But it's your understanding of the

1 hazardous waste regulations and the definition of
2 a surface impoundment that's contained in Section
3 260, or Part 260 of the rules that that's not a
4 surface impoundment, is that correct?

5 A You're asking me to draw a legal
6 conclusion.

7 MR. RUNDINO: I'll object to the
8 question, you're asking him to draw a legal
9 conclusion, you certainly are. Unless
10 you're willing to accept his understanding
11 as having some force and effect, the
12 question is irrelevant.

13 MR. MCPHEE: No it's not. I'm
14 asking Mr. Hjersted as a person who has
15 been responsible for compliance with
16 hazardous waste regulation at that facility
17 over a number of years, and I presume he
18 has some knowledge of what they mean and
19 imply as far as his facilities goes, to
20 tell me whether he believes that is a
21 surface impoundment under the rules applied
22 to his facilities, and knowing that he's
23 responsible for compliance with the
24 regulations at that location. That's not

1 requiring a legal conclusion. And I'm not
2 going to be bound by his statement

3 MR. RUNDINO: Than the question is
4 irrelevant.

5 MR. MCPHEE: It's not irrelevant.
6 Certify the question, if you want, but I
7 want an answer.

8 THE WITNESS: Your question again.

9 BY MR. MCPHEE:

10 Q Would you consider yourself to be the
11 person in charge and responsible for environmental
12 compliance at Conservation Chemical Company of
13 Illinois?

14 A Yes.

15 Q When did you first become familiar with
16 the hazardous waste rules?

17 A I think the first significant law was
18 put out in '76.

19 Q And under the Resource Conservation
20 Recovery Act you had occasion to obtain a copy of
21 the hazardous waste regulations, correct?

22 A We got a code of Federal regulations
23 that covered that.

24 Q When did you first obtain that?

1 A I just don't keep that in memory.

2 Q You applied for this facility's
3 continued operation under RCRA submitting a Part A
4 notification?

5 A Yes.

6 Q And you signed the application, didn't
7 you?

8 A Yes.

9 Q And you had some awareness of when you
10 signed that that you were going to be obtaining
11 interim status, didn't you?

12 A Yes.

13 Q And interim status means that you be
14 allowed to continue until you had a final permit,
15 correct?

16 A Yes.

17 Q Now, I also presume that you looked at
18 the rules for purposes other than just obtaining
19 interim status, right?

20 A Right.

21 Q You tried to find out what regulations
22 applied to your facility?

23 A Right.

24 Q And you tried to find out what areas

1 were not in compliance that you could bring them
2 into compliance?

3 MR. RUNDINO: I'll object. What
4 time?

5 MR. MCPHEE: At the point after he
6 first became aware of the hazardous waste
7 rules.

8 MR. RUNDINO: We don't know they
9 were in effect when he first became aware
10 of them.

11 MR. MCPHEE: Well, we can go around
12 with this several different ways. Off the
13 record a minute.

14 (Discussion off the record.)

15 BY MR. MCPHEE:

16 Q Okay Mr. Hjersted, you don't know when
17 you first got a copy of the hazardous waste rules?

18 A I don't recall that date, no.

19 Q Was it in 1980?

20 A I thought it was before then.

21 Q 1979?

22 A I told you, I don't know. I mean my
23 God, you can't -- you can ask all the way down the
24 numbering system, and I'll still say I don't

1 recall.

2 Q Do you know when the hazardous waste
3 rules became effective?

4 A I told you previously, I thought it was
5 '76, but certain rules were effective then, and
6 other rules effective in -- well, there's a
7 continual progression of more rules being in
8 effect.

9 Q But there was a package of rules that
10 was adopted under the RCRA Act, correct?

11 A Which came out as I recall in '76, but
12 they were supposed to be implemented in '78 or
13 '80, I just don't have all those dates in my head.

14 MR. MCPHEE: Let's mark that as
15 Deposition Exhibit 2.

16 (Whereupon said document was marked
17 as Plaintiff's Deposition Exhibit
18 No. 2 for identification, 3/14/86,
19 J.S.)

20 BY MR. MCPHEE:

21 Q Okay, Mr. Hjersted, referring to
22 what's been marked as Deposition Exhibit 2, can
23 you tell me what that is, please? That consists
24 of a number of pages, maybe you ought to look

1 through it and read all of them.

2 A Well, that's what I would call Part A.

3 Q That's your RCRA Part A permit
4 application. If you look down at the bottom of
5 that page you'll see your signature.

6 A It doesn't say Part A anywhere, but
7 this is what I recall as being Part A.

8 Q That's your signature at the bottom of
9 that document, correct?

10 A Yes.

11 Q And you signed that on what date?

12 A November 18th, 1980.

13 Q Did you prepare that document, sir?

14 A No.

15 Q Did you work on its preparation?

16 A I might have contributed some of the
17 information.

18 Q Did you review the document before you
19 signed it?

20 A Yes.

21 Q And as far as you know, that reflects
22 the accurate state of facts with respect to the
23 application with respect to your facility at that
24 time?

1 A Well, at that time --

2 Q That's what we're asking about, at that
3 time. When you submitted that Part A, that's an
4 accurate representation of what went on at your
5 facility, is that correct?

6 A That's my understanding.

7 Q Is that your understanding or is that
8 your knowledge?

9 A Well, let's see?

10 Okay, so one point, as I recall, we
11 didn't have, I don't recall this business of --

12 Q You reviewed that document at the time
13 you signed it, right?

14 A Yes.

15 Q Was your memory fresher then than it is
16 now?

17 A Of course.

18 Q So as far as you know, that document at
19 that point reflected accurately what the company
20 was doing, is that correct?

21 A At the time that I signed it?

22 Q Right, that's what we're asking about.

23 A I thought you meant now.

24 Q No, I'm asking at the time you signed

1 it, whether that accurately reflected what was
2 going on at Conservation Chemical?

3 A That was my understanding, of course.

4 Q Is that your knowledge is what I'm
5 trying to get at?

6 A Well --

7 Q You certified by your signature that
8 what was contained in that application was
9 correct, isn't that true?

10 A That's right.

11 Q Now, looking over at page --

12 A There was one thing here that we've
13 learned in a subsequent period.

14 Q Which is?

15 A Frankly, we've had a problem
16 identifying the pie basin.

17 Q Well, that's what I was getting to
18 next. We'll turn over to about the seventh page
19 here, that's a map of the facility that was
20 prepared either by you or at your direction in
21 connection with this application, is that right?

22 A That's right.

23 Q Looking down at what would be the south
24 corner of the site, there's a triangular shape

1 there, is that correct?

2 A That's right.

3 Q And that has reference to the pie
4 shaped basin, right?

5 A That's right.

6 Q That's what's you understand to be the
7 outline of the pie shape basin?

8 A That's correct.

9 Q What was the notation placed on there
10 as to what that particular area was?

11 A Surface impoundment.

12 Q Surface impoundment, correct?

13 A Yes.

14 Q You say you've had a hard time figuring
15 out why that is not the surface impoundment. I'd
16 like you to explain to me --

17 A Well, after this was done we, and when
18 I say we, I mean the people that helped prepare
19 this, and the consultant or the consulting
20 engineer, realized that that may not be the proper
21 identification, and that a waste pile may more
22 accurately reflect its identity.

23 Q Was it an indentation in the ground
24 when you first bought the property?

1 A It would hold fluids, yes.

2 Q And it was --

3 A When we first bought it.

4 Q Have you got a rough estimate of the
5 volume of the material that would be contained in
6 there, the fluid material at the time you bought
7 it?

8 A I could calculate it.

9 Q Would it be on the order of a million
10 gallons?

11 A Oh, no.

12 Q Half a million?

13 A Less than that.

14 Q Quarter of a million?

15 A Probably.

16 Q Somewhere in that neighborhood of a
17 quarter of a million gallons?

18 A I said less than a quarter of a
19 million, you're trying to trap me here.

20 Q No, I just asked you. Anyway, a
21 substantial --

22 A You can measure the area and say oh,
23 maybe two or three feet, you know. I don't
24 recall, really. There was an indentation.

1 Q And you filled that indentation, didn't
2 you?

3 A We could just go out there and measure
4 and see just how much metal hydroxide sludge is
5 there.

6 Q You filled that indentation with metal
7 hydroxide sludge?

8 A Yes.

9 Q And other material?

10 A That's all I know of, is the metal
11 hydroxide sludge.

12 Q So at this point it sticks above the
13 surface level. Is there still ponding that takes
14 place there?

15 A Again, you can look, but when I've
16 looked, if there's been any standing water, it
17 would be less than a few inches, you know. Most
18 of the time it's dry.

19 Q So you said you're not sure whether
20 that's a surface impoundment or a waste pile?

21 A That's right. We subsequently became
22 more aware of these definitions and what they
23 meant.

24 Q You mean you yourself?

1 A Myself, the other people that helped
2 prepare this, they said no, that's a waste pile,
3 and even when this was discussed with personnel at
4 EPA, my understanding, I didn't have the
5 conversation, but these other people did, and
6 those people said yes, that is -- looks more like
7 a waste pile.

8 Q So it's either a surface impoundment or
9 a waste pile, correct?

10 A That's correct.

11 Q Now, you've given me, I guess, your
12 conclusion based on your understanding of what the
13 regulations state about this particular area, that
14 it's either a waste pile or surface impoundment.

15 I'd like you to turn your attention to
16 the west side of the railroad tracks and tell me
17 if you consider that area with the metal hydroxide
18 sludge and possibly other material, whether or not
19 that's a surface impoundment, in your estimate, or
20 if not, why not?

21 A Why it's not a surface impoundment.

22 Q All right. I would assume by that
23 remark that you do not characterize it as a
24 surface impoundment?

1 A I've maintained that I don't know, you
2 know, because it's a legal technical question, you
3 know, in a highly specialized -- certainly my
4 opinion was that from the physical standpoint when
5 they came on the property, you know, observed its
6 use, I would certainly call it that. Now, I would
7 look at it and say that's a waste pile, it won't
8 hold any water to speak of.

9 Q The west side of the tracks now or the
10 pie shaped basin?

11 A Even the west side.

12 Q Where does the water go, does it seep
13 out the bottom also?

14 A If it rains on it, you mean?

15 Q Yes.

16 A Well, I've not stood around watching
17 the thing, but you can look at it and see that
18 there is no significant depression, you know, so I
19 wouldn't call it a surface impoundment at this
20 time.

21 Q But you've seen water collect over
22 there, right?

23 A Going back to the early '70s, yes.

24 Q Have you seen water there recently?

1 A No.

2 Q When was the last time you were at the
3 site?

4 A January 16th and 17th.

5 Q Now, you've not seen water --

6 A Don't quote me on that, but right
7 sometime in that period.

8 Q Have you not seen water over there
9 because you haven't gone there to look?

10 A Well, I, like I said, I was there on
11 January 15th or 16th or 17th.

12 Q My question is --

13 A There wasn't water at that time.

14 Q Did you go out and look at the area at
15 that time?

16 A Yes.

17 Q And previous times, did you always --
18 let's ask that question. How often would you have
19 gone to the site in the period say 1980 to the
20 present?

21 A Well, I'd say every other month on the
22 average.

23 Q And you'd been in telephone contact
24 with the plant manager daily, right?

1 A Daily when I was working at my office.
2 If I was visiting other facilities or on
3 deposition or selling, you know, whatever other
4 duties, no.

5 Q And you were in your office what
6 percentage of the time then?

7 A Over a five-year period, you mean?

8 Q Right.

9 A Oh, this is strictly a guess, we have
10 records on the other thing, but just guessing,
11 about two-thirds.

12 Q Records on what other thing?

13 A Trips to Gary.

14 Q You do have those records?

15 A Yes.

16 Q Would you have produced any memoranda
17 or other documents that would reflect discussions
18 that you have had with the plant manager in
19 connection with those trips?

20 A Do I have them? Yes.

21 Q Those are the records you referred to?

22 A You should have them too.

23 Q We don't have all of them, sir.

24 A You don't?

1 Q No. Now, with respect to the area
2 around tank 22, that ponded area, that is in fact
3 a diked area and you put up all or some portion of
4 the dikes that surround the tank, correct?

5 A I'd rather just tell you what we did
6 rather than answer the question.

7 MR. RUNDINO: Answer the question.

8 Did Conservation Chemical put up all or
9 substantially all of the dikes?

10 BY THE WITNESS:

11 A Probably no.

12 BY MR. McPHEE:

13 Q Probably no. You put some dike areas
14 up and some --

15 A We put some in, but not all, I would
16 say.

17 Q So that was previously not an enclosed
18 area, right?

19 A Well, no, you see --

20 Q Previous to your activity there adding
21 dikes --

22 A Well, when it finally was in service
23 they had a levy around it.

24 Q And your activity was then what?

1 A Well, there was -- I would assume that
2 there was a levy when the refinery was in
3 operation.

4 Q Let's not assume now, we've been trying
5 to stick with what you know as opposed to what you
6 assume. What do you know about what was there
7 before, what do you recall?

8 A Well, the -- this heavy line, which
9 represents the property line, also represents a
10 railroad track, and a raised embankment. Then
11 there was a levy --

12 Q That's on the west side of the
13 property?

14 A No, on the east side of tank 22 on our
15 property there was a levy there.

16 Q Well, you were first indicating on the
17 west side of the property by the railway, correct?

18 A Well, you've got a railroad track that
19 comes along on the west side and north side of
20 T-22. Then you have a levy that existed when we
21 came on the place, they called it the north and
22 east side. Then there was relatively high ground
23 on the south side, but not a levy as such until
24 fairly the last few years we built that up.

1 Q Why did you put that levy in?

2 A To comply with a certain regulation, I
3 don't know the number, spill control for petroleum
4 stocks, it's another regulatory agency.

5 Q Another agency, or was it the U.S.
6 EPA?

7 A No,

8 Q It was another agency that came in?

9 A Well, let me back up. It was an
10 independent Government agency and I thought it was
11 a different organization, but it may be just
12 another branch of the EPA, but it was not anybody
13 in your department.

14 Q Looking at -- so you did add diking
15 around portions of the area around tank 22?

16 A Yes.

17 Q And that wall that exists between 19
18 and 22 was also added by you, or dike, I should
19 say?

20 A Well, it was built up by us, yes.

21 Q And when did that take place?

22 A Well, I know we built a road out there,
23 that was in the '70's, and we built it up a number
24 of occasions, needed to get it higher, higher or

1 broader. You asked when, and I don't know when.
2 There were a number of occasions, and of course I
3 do recall specifically that after this high water
4 event and reported spill in the spring of last
5 year, that it was -- that that levy was beefed up,
6 I call it the road levy.

7 Q Do you recall how much material was
8 reported as being spilled out of tank 19, I assume
9 that's what we're talking about?

10 A No. We previously discussed this and I
11 think my words were not a significant
12 environmental impact.

13 Q But as far as the actual discharge of
14 material from tank 19, could you recall a report
15 being made by Conservation Chemical to the EPA
16 concerning that spill?

17 A I don't know, I don't know either way.

18 Q Just to sort of follow up on tank 19
19 now, you've talked a little bit about the hole in
20 the tank, you observed those holes from the
21 inside, is that correct?

22 A Yes.

23 Q And they're at the in -- effectively at
24 the bottom of the tank, correct?

1 A Close to it, why yes.

2 Q And the hole presumably would not have
3 been eaten through the tank, I assume that's what
4 happened, that the tank is corroded away there?

5 A Well, you'd have to examine which way
6 it went, I mean --

7 Q Just as a chemical engineer, would you
8 believe that the material inside tank 19 would
9 have eaten away the walls of the tank at the
10 bottom like that?

11 A Considering the hole area, the answer
12 is no, but you could not absolutely bring that
13 conclusion because as I said, the roof is gone,
14 and that never -- that didn't see either liquid or
15 oil, neither the water or the oil.

16 Q Well, all that was put into tank 19 was
17 oil, is that correct, or rainfall?

18 A Right, to my knowledge.

19 Q And I think you previously testified
20 that it was the acidity of the soil around there
21 or the material around the tank that caused the
22 holes to appear, correct?

23 MR. RUNDINO: I don't think that was
24 the testimony at all, I object,

1 mischaracterization.

2 BY THE WITNESS:

3 A I didn't say that, I would say that
4 would be the most reasonable speculation to make.

5 BY MR. MCPHEE:

6 Q And there have been leaks from the
7 holes that have been eating into the tanks,
8 correct?

9 A Yes.

10 Q And that material is PCB contaminated
11 oil, right?

12 A Yes. But, you know, we're getting all
13 this out of its historical context.

14 MR. RUNDINO: And they're not
15 interested in the historical context.

16 BY MR. MCPHEE:

17 Q Now, as far as the tank 20, there are
18 holes in that tank too, aren't there?

19 A Yes.

20 Q And would it be your estimation that
21 that would have been caused by the material that
22 was placed in the tank?

23 They aren't bullet holes, for example,
24 are they?

1 A I never thought of that. By God --
2 well again, you're asking me to speculate. Yes,
3 that's a reasonable speculation. The roof is in
4 very bad condition, which --

5 Q But all that would come on the roof
6 would be essentially precipitation, water or snow,
7 and what was in the tank was the metal hydroxide
8 sludge with the ph. of 1, right?

9 A Well, the roof is -- a lot of that has
10 been corroded away. My understanding of the -- I
11 think there's just one small hole, and that is
12 normally above the point where you have the sludge
13 level, that's where the rainfall is, and you're
14 asking me to speculate, I don't, I know all about
15 acid rain, we have acid rain in that particular
16 location.

17 Q And at what point did the plant start
18 putting the material that came out of the process
19 sump into tank 20 as opposed to placing it into
20 the area around tank 19.

21 MR. RUNDINO: I'm going to object, I
22 don't think that's the testimony.

23 MR. MCPHEE: That's a question,
24 that's not a review of previous testimony.

1 I'm asking --

2 MR. RUNDINO: I object, it assumes
3 facts not in the record.

4 BY MR. MCPHEE:

5 Q Mr. Hjersted, were you told by anybody
6 at your plant that they were taking the process
7 sump material and placing it into tank 20 and
8 adjacent to the area around Pond 19 at the
9 direction of the U.S. EPA sometime around October
10 of last year?

11 A Oh, let me get my thinking -- I tell
12 you, I'm trying to concentrate on these different
13 time periods, and when I jump out of one into
14 another one, it's just like saying hey, don't go
15 into that filing cabinet, go into this one here.

16 Q We're in the filing cabinet that's
17 October of 1985.

18 A You asked me a question about when did
19 we switch from T-20 to T-19.

20 Q I'll get to that question. The
21 question I'm asking right now is were you aware
22 that at some point in October, 1985, the Federal
23 on-scene coordinator that was conducting the
24 removal action at the site to try to take some of

1 the material you accumulated in there off,
2 directed your people to stop placing the process
3 waste in the area around Pond 19 and at that point
4 they then started placing the material into tank
5 20?

6 MR. RUNDINO: I'll object, I don't
7 follow what material you're talking about.

8 MR. MCPHEE: We've been talking
9 about the material that comes out of the
10 process sump.

11 MR. RUNDINO: The water?

12 MR. MCPHEE: No, not water, we
13 established that already. There may be
14 water in there, but there's other material
15 in there as well.

16 MR. RUNDINO: The sludge.

17 MR. MCPHEE: We're talking about the
18 liquid.

19 MR. RUNDINO: Okay.

20 BY THE WITNESS:

21 A Let's ask the question one more time,
22 please.

23 BY MR. MCPHEE:

24 Q All right, did anybody tell you in

1 October of 1985 that the Federal on-scene
2 coordinator directed the plant operators then
3 present at the site to stop discharging the
4 material that was coming out of the process sump
5 into the area around tank 19?

6 A I think what I recall, the way it was
7 put to me, is that our people should stay away
8 from facilities on the other side of the tracks,
9 you know, which would include tank 19 and the
10 cyanide tank farm. Later we were told other
11 things, but that was what we were told.

12 Q Did Mr. Grimmett convey to you, Mr.
13 Sims' statement to him that he should cease
14 discharging that material from the process sump
15 into the area around tank 19?

16 A Well, the way it was conveyed to me
17 that our people should stay away from that area,
18 which meant that we couldn't do anything in that
19 area.

20 Q And nothing was conveyed to you about
21 ceasing the discharge of that particular material
22 into that area?

23 A Well, it would follow that we wouldn't
24 do anything in that area if we couldn't go into

1 that area.

2 Q Was it your instruction then to Mr.
3 Grimmett to take the material coming out of the
4 process sump and place it into tank 20?

5 A I think, as I recall, Mr. Grimmett
6 asked if that would be satisfactory, that he
7 needed about a day before he could get some other
8 facilities ready, and I said well, go ahead.

9 Q All right, and did Mr. Grimmett report
10 to you that material then began discharging from
11 the top of that hole that you refer to at the top
12 of tank 20 out into the area around tank 20?

13 A Yes, and it was immediately
14 discontinued.

15 Q Now, around tank 20 there's a depressed
16 area, correct?

17 A Correct.

18 Q There's an area in fact that's been dug
19 out to a depth of at least 5 or 6 feet, is that
20 correct?

21 A I don't think it's that deep.

22 Q Well, how deep was the dug out area
23 then?

24 A Oh, I'd say it's 1 or 2 feet below the

1 floor of tank 20.

2 Q And you've seen the area that's dug
3 out, correct?

4 A Yes.

5 Q What kind of soil came out of the
6 diggings?

7 A Sand.

8 Q Was there a dike around tank 20?

9 A Yes.

10 Q Who put that particular dike in?

11 A The company.

12 Q Conservation Chemical Company did?

13 A Yes.

14 Q When was that installed?

15 A In '85.

16 Q And the purpose of installing the dike
17 was what?

18 A Again, it was a spill prevention
19 measure.

20 Q And were there leaks of the tank
21 contents from tank 20 into that area during the
22 period from when it was installed to the time it
23 was closed down or than the one I've just
24 described?

1 A None that I observed.

2 Q You've looked at that tank though,
3 correct?

4 A Yes.

5 Q You know there are weep holes in the
6 tank, correct?

7 A Yes.

8 Q And you can see from running down the
9 side of the tank that there are marks where
10 material has come out of that tank and drained
11 down there?

12 A Correct.

13 Q Into the area around number 20?

14 A Right. I'd like to take a quick break,
15 by the way, if I can.

16 (Short recess.)

17 BY MR. MCPHEE:

18 Q I want to return just for a minute to
19 the area labeled on Deposition Exhibit 1 as the
20 off-site basin. That is a depression, isn't it,
21 Mr. Hjersted?

22 A Excuse me, which one?

23 Q This area that's labeled the off-site
24 basin?

1 A Oh, today, very, very small.

2 Q But it is a depression, right?

3 A I would guess under 6 inches.

4 Q And you did place metal hydroxide
5 sludges over there, correct?

6 A Yes, the company did.

7 Q You also put metal hydroxide sludges
8 into the basin around T-22, didn't you?

9 A I have no knowledge of that. I don't
10 think we did. I think an analysis of the material
11 would show what's there, but I don't recall any
12 practice of using that particular area.

13 Q Was there any policy that you created
14 that said that metal hydroxide sludges weren't
15 supposed to be put there?

16 A You see, this was our primary storage
17 area for the oil, and we needed that.

18 Q I'm not talking about the tank itself,
19 I'm talking about the area around T-22, the basin?

20 A That's what I'm talking about. In
21 other words, we're required to have certain volume
22 to collect a spill, and since that was the largest
23 single volume of material that we had, I mean we
24 had to protect that spill area.

1 So I think that's the reason, you know,
2 I'm forming a rationale on why we did what we did,
3 that's the --

4 Q But you don't really have any knowledge
5 one way or the other ultimately whether that area
6 had been used to dispose of metal hydroxide
7 sludges?

8 A I don't believe it was.

9 Q But you have no personal knowledge that
10 it wasn't used at some point by your employees out
11 there to dispose of some of that material?

12 A I guess your question is do I have
13 knowledge --

14 Q Are you morally certain that your
15 employees never used that area to dispose of metal
16 hydroxide sludges?

17 A No, I'm not certain at all.

18 Q And the basin around tank 19 is a
19 depression too, correct?

20 A Yes.

21 Q And before you filled it in the pie
22 shaped basin was a depression too, correct?

23 A Yes.

24 Q And both of those contained what you

1 would characterize as metal hydroxide sludges,
2 correct?

3 A Yes.

4 Q And the area to the west of the tracks
5 contains metal hydroxide sludges?

6 A Yes.

7 Q Now, about the area around T-20, other
8 than the drippings that may have come out of that
9 tank and run down to that area, or the discharge
10 that occurred when the pumping filled it past the
11 point where the hole was in the side of the tank,
12 what other material might have been in the area
13 around tank 20?

14 A As I recall, we had a break in a valve
15 or a valve leak or something like that in tank 20
16 and some of the sludges from the bottom of the
17 tank came out.

18 Q Those were also what you'd characterize
19 as metal hydroxide sludges?

20 A Right, this was along in the '70's, I
21 would think. We had a nozzle at the bottom of a
22 tank holding solvents that leaked.

23 Q Which tank was that? Is that shown on
24 that drawing?

1 A I don't know that this is too accurate,
2 but one of those tanks.

3 Q One of the tanks that lies between T-20
4 and the API separator box?

5 A Right.

6 Q Southwest of the tank, of T-20?

7 A Correct.

8 Q And what portion of the contents of
9 that tank was lost?

10 A I don't know, but that one would be
11 what I would term a significant leak of material.
12 My understanding or my recollection is that this
13 occurred in the winter and the ground was frozen
14 and they were successful at pumping up what they
15 termed a substantial portion of the leaks, and
16 they shoveled up a lot of the soil after the
17 liquid was pumped off, but all that's been
18 reported.

19 Q That was part of a written report that
20 was prepared at your instance?

21 A Not specifically at my instance. Part
22 of the automatic reporting process.

23 Q During the operations at the site when
24 there were leaks or spills or breaks of that sort

1 of problem, those would be routinely reported to
2 you?

3 A They were supposed to be.

4 Q Now, that was your instruction to the
5 plant manager?

6 A Yes.

7 Q What was the plant manager's authority,
8 as given by you, to spend funds to deal with
9 situations like that?

10 A Well, let's see, I'm trying to think of
11 a way to answer that. Our policy was that a
12 manager could spend \$750 without referring to me
13 for routine requirements. For an emergency,
14 although we didn't have this in writing, I don't
15 think there was any particular limit. We tried to
16 provide and did provide auxiliary vessels to put
17 any materials in, that was part of our --

18 Q That would be a tank that would be on
19 the site that you would just collect there,
20 correct?

21 A Yes, in other words, if there was a
22 tank that appeared to be in poor condition, or
23 appeared that it might leak or it did leak, then
24 the procedure was to pump it out of that into a

1 good standby tank.

2 Q But as far as expenditures, you've used
3 the term we, I presume when you say we, you refer
4 to yourself as far as establishing the policy of
5 being allowed to spend money up to what you've
6 described as a \$750 limit, is that correct?

7 A Yes, and the reality was that that
8 limit was exceeded a lot of the time.

9 Q And in that circumstance, what would
10 happen?

11 A I suppose these expenditures would be
12 reviewed for their -- the judgment that the
13 manager used.

14 Q Reviewed by you?

15 A And the other managers, yes.

16 Q But principally by you, correct?

17 A I'd say principally, yes. We draw up
18 to management by consensus.

19 Q But you continue to be president of the
20 firm.

21 A Yes.

22 Q And the final decisions about
23 expenditures were yours, correct?

24 A That's too easy an answer, you know. I

1 mean --

2 Q Well, I would assume that you sign
3 checks, right, on behalf of the corporation --

4 A I was one of the people that signed
5 checks, yes. I was not the only person that
6 signed checks.

7 Q But as a general rule, you signed all
8 or substantially all of the checks that were
9 issued by Conservation Chemical?

10 A I think I signed over half, but I don't
11 know that I signed much more than half, I don't
12 know.

13 Q But you review all major expenditures,
14 correct?

15 A And that's after the fact.

16 Q Well, let's go to before the fact.
17 We're talking about spills now, right?

18 A I'm just talking about all
19 expenditures.

20 Q As I understand it, the policy at the
21 facility was that there would be an existing
22 account of say \$500 that the manager could draw on
23 and if he ever wanted to spend in a month any more
24 than that amount, he had to get personal approval

1 from you, is that correct?

2 A I think that's not correct, no.

3 Q Why don't you explain to me how that
4 system did work then?

5 MR. RUNDINO: Is this a spill
6 account?

7 BY MR. MCPHEE:

8 Q No, I'm talking about the general cash
9 account for the facility.

10 A Well, the question then is how did we
11 manage our expenditures, right?

12 Q Right.

13 A The manager would stipulate what
14 personnel he needed to do what needed to be done,
15 the number and the kind. He would generally touch
16 base with me and say I've got to add a man, I've
17 got to take a man off, but that was quite often --
18 could be after the fact rather than before. Other
19 people in the organization would set, you know,
20 sales levels or make sales, and the manager was
21 instructed to buy sufficient raw material to take
22 care of that. Now, he was assisted --

23 Q Can we stop there for a second. Would
24 the manager make the purchases of raw material?

1 A Yes.

2 Q So the billing and the purchases of
3 pickle liquor would have been done through the
4 offices at Gary or would they have been done
5 through Kansas City or Mission?

6 A See, there's a kind of duality of
7 functions. The manager would order material,
8 depends on what we're talking about, like the
9 manager had a great deal of authority, or what
10 kind of scrap he would take and what he would pay,
11 because this was hard to say from afar, you know,
12 what value it was, because of the impurities of it
13 or how it's handled. Chlorine, the -- except for
14 kind of a veto power, that was handled by the
15 general manager, selection of vendors.

16 Q Mr. Kaiser?

17 A Mr. Kaiser. But the manager would say
18 I want this now, or two cars or whatever, and he
19 could also say we're not getting the service from
20 these people, or they don't have adequate
21 pressure, and reject that.

22 I told you about the labor. Supplies,
23 pumps, replacements, things like that, he handled
24 all of that.

1 Q Up to what amount now?

2 A Well, on paper it was \$750, in reality
3 if he needed to buy a pump part for \$1,000, he'd
4 have to buy it, he would buy it, he knew what he
5 needed.

6 Q But you approved all those expenditures
7 and insisted that you have that approval, correct?

8 A I don't think that I -- as long as I
9 had the confidence of the person that's trying to
10 get value received, I wasn't very -- I didn't --
11 I'm trying to choose the words. I was not
12 extremely rigid on the thing.

13 Q I understand that. But you did retain
14 the approval authority, correct?

15 A There was some managers that might go
16 overboard and stock way too many parts, I might
17 get after them for that, I mean you can buy five
18 pump parts at \$500 apiece, and you've got \$2500
19 tied up in inventory, and sort of after the fact
20 I'd get after them to lower the inventory or keep
21 their inventories down. I suppose ultimately if
22 they didn't use good judgment, change managers.

23 Q But as to major purchases that would be
24 above that \$750 mark, isn't it the policy that the

1 manager was supposed to check with you before
2 making the purchase?

3 A Yes.

4 Q And if he ran over his \$750 budget,
5 he'd also have to check with you?

6 A That was not a budget, that was just a
7 single expenditure.

8 Q There wasn't a cash budget of say \$500
9 a month?

10 A Oh, no, no. I mean you couldn't turn
11 around with \$500.

12 Q Now, looking back over the last --
13 let's say since 1980, do you have any idea
14 approximately how many times a week or month
15 spills or leaks of material would be reported to
16 you from the process area at the facility?

17 A How many times a week? I would rather
18 put it in times per year.

19 Q Well, let's break it down that way.
20 How many times did you receive a report of a spill
21 occurring in the process area per year?

22 A This is just based on my recollection.
23 I would say one a month or like 12 a year would be
24 big.

1 Q And then not including the process
2 area, was it your policy that the plant manager
3 report to you spills or leaks or problems with the
4 tanks?

5 A If you're talking about like the
6 cyanide tank farm, for example.

7 Q Well, I would include the tank farm,
8 the storage area where you have solvent and the
9 two tanks between the API separator and tank 20,
10 the cyanide on the other side of the road, tank 19
11 and tank 20?

12 A All these are reportable items.

13 Q You say reportable items, that is the
14 manager was supposed to report to you if there was
15 a problem?

16 A I mean those were obviously a lot
17 different concerns than if a ferric chloride tank
18 was filled too high, which was caught, you know,
19 it could be caught in that rubber lined tub.

20 Q The process sump, you mean?

21 A Well, the process sump had a sump
22 within a sump, which could, you know, collect
23 drainage or rundown, you know, and be very
24 concentrated material and that was all recycled.

1 Q The overflow that you were talking
2 about just a minute ago, where somebody would
3 overfill the process tank, that would be pickle
4 liquor, correct?

5 A It could be product, yes, or material
6 in process.

7 Q And where would it go?

8 A Well, it could go in either the rubber
9 lined tub or the concrete.

10 Q And those kind of spills are to be
11 reported to you, correct?

12 A I say it should be.

13 Q But they weren't always?

14 A I don't think they always were, no.

15 Q And as far as the spills from the other
16 storage areas, the other tanks that you had on the
17 site, those were to be reported to you, correct?

18 A Yes.

19 Q And do you know of any instances when
20 those weren't reported or do you suspect any
21 occasions when they weren't?

22 A I don't have any knowledge of that, no
23 one has said hey, a certain thing happened, you
24 know, that I hadn't known about, anything in

1 connection with these other tanks.

2 Q As to the cyanide tank farm that you
3 referred to, which is just to the west of the
4 railroad line that runs through the middle of the
5 property, there have been leaks in these tanks,
6 haven't there?

7 A Yes.

8 Q In fact some fairly substantial leaks
9 from those tanks?

10 A I think, you know, if you examine the
11 record, you can see exactly how many pounds or
12 gallons of cyanide came out, that certainly from
13 the record we can calculate the environmental
14 impact and we don't need to get into this business
15 of what could we mean by substantial or not
16 substantial. I'd rather do that, if you want
17 specifics.

18 Q There's a dike around the cyanide tank
19 farm, right?

20 A Yes, it's very minimal.

21 Q It's basically a limestone material, is
22 that what it is?

23 A Yes, it's more of I guess a back-up
24 thing if there's a little dripping and it might

1 catch that.

2 Q It wouldn't catch a leak in any of the
3 major tanks in the tank farm?

4 A If we had a bomb fall on the tank or a
5 big rupture, it wouldn't serve that purpose.

6 Q It was a dike installed by Conservation
7 Chemical?

8 A Yes.

9 Q Was that done in 1984?

10 A I don't know when that was done. It
11 was done in the '80's.

12 Q It was done in the '80's?

13 A Yes.

14 Q And during that period you were aware
15 that there had been spills and leaks from the
16 cyanide tanks, correct?

17 A Yes.

18 Q That were within that dike?

19 A Yes.

20 Q And on one occasion it was actually a
21 valve failure, a fairly large volume of material
22 that seeped from one of the tanks?

23 A I don't recall that incident.

24 Q What is the soil characteristics

1 underneath those tanks?

2 A Well, what I've observed of it, it's
3 this imported fill to raise the elevation of the
4 area.

5 Q So a granular material?

6 A Highly variable, there's a lot of big
7 granules in it.

8 Q And you consider it to be a fairly
9 permeable material too, right? That is a liquid
10 would pass through it fairly freely?

11 A I would expect that, although I'm not
12 expert in that.

13 Q Okay. Going back to this question of
14 expenses, on how many occasions did somebody at
15 the CCI facility make an expenditure of over \$1500
16 without your approval?

17 A I would say it was not an infrequent
18 thing.

19 Q Does that mean a hundred times a year?

20 A Well, understand that like a tank car
21 of chlorine, I think it costs \$17,000, and I
22 didn't approve that because it's all automatic.

23 Q Other than material that was used in
24 processing or purchased for that purpose, let's

1 say for example a pump housing or an impeller, or
2 items of that nature?

3 A It was my impression that this was --
4 we decide about how many spare parts we'd need,
5 and those were kept. I didn't have to approve
6 each part that was ordered.

7 Q You approved the number that would be
8 kept in stock though, correct?

9 A I approved that, yes.

10 Q Now, you've had a history of
11 involvement with regulatory agencies where they
12 filed administrative or judicial actions against
13 you with regard to this site?

14 A Yes.

15 Q And in the course of some of those
16 discussions with both the U.S. EPA and the
17 Indiana State Board of Health there's been talk
18 about the drums that were placed on the facility,
19 right?

20 A I'm sure there was.

21 Q In connection with the drums, was it
22 not required of you that you install some kind of
23 pad on which the drums would be stored?

24 A I don't -- the demands that I recall

1 are mainly placing them on pallets so that they
2 wouldn't corrode at the bottom, and having covers,
3 that's the part that I recall.

4 Q Did those demands also include
5 repackaging the drums that were already corroded
6 and lost part of the contents?

7 A Yes.

8 Q And there were in fact a number of
9 drums out there that had in fact corroded away and
10 lost their contents onto the ground?

11 A There were some.

12 Q More than ten?

13 A I couldn't say.

14 Q From your own observation, you couldn't
15 say?

16 A Were there more or less than ten?

17 Q Right.

18 A Well, I'd say more than ten, but
19 whether, you know, the extent, I couldn't say. I
20 would say certainly not the whole thing, but --

21 Q In connection with the deal -- in
22 dealing with the drums, isn't it a fact that Jim
23 Poisel suggested to you that you need a concrete
24 pad built out at the facility?

1 A I certainly don't recall that. You
2 know, we have a very large area of concrete that's
3 not in use. Now, you know, if that was --

4 Q Did you have discussions with Mr.
5 Poisel about the installation of a concrete pad at
6 the facility for storing the drums?

7 A I'm afraid to say I just don't recall
8 that.

9 Q You don't recall telling him not to
10 build such a facility because it would cost too
11 much money?

12 A No, as I said, if that had been deemed
13 desirable, we would use what we had, which is this
14 area between the compressor house and the tower.

15 Q Some of those drums contain
16 hydrofluoric acid, don't they?

17 A Hydrofluoric?

18 Q Right.

19 A At this time, I don't know. I don't
20 think so.

21 Q You have had drums of hydrofluoric
22 acid?

23 A In the past we've had it, but I think
24 it was dumped.

1 Q You've had drums of cyanide too?

2 A Yes.

3 Q And drums containing both chlorinated
4 and non-chlorinated solvent, right?

5 A I would assume so.

6 Q You've also had lab packs, right?

7 A Yes.

8 Q Lab pack just being a collection of odd
9 chemicals from the lab?

10 A Yes.

11 Q And some of those lab packs in fact
12 have corroded away and their contents spilled on
13 the ground, right?

14 A I don't know that specifically.

15 Q Have you ever observed those?

16 A I don't recall that.

17 Q Now, Mr. Poisel left your employment
18 sometime in the middle of last year, is that
19 correct?

20 A Yes.

21 Q And now, something you discussed with
22 him was the hiring of a chemical engineer to
23 assist in determining what ought to be done to
24 clean up the site, is that correct?

1 A More from the standpoint of
2 implementing a plan rather than deciding what to
3 do.

4 Q But he told you on numerous occasions,
5 didn't he, that he was insecure in his position
6 because he didn't feel he had the qualifications
7 to determine what had to be done at the site in
8 terms of environmental improvements?

9 A That was not his job.

10 Q If it wasn't his job, isn't it also a
11 fact that you assigned to him the task of figuring
12 out what to do with the drums at the site?

13 A I think what he'd been asked is to
14 repack the drums and store them per the EPA
15 requirements. But no, he was not told to get rid
16 of the drums as such.

17 Q In fact he was told he wouldn't have
18 the money to get rid of them?

19 A We felt we had other priorities.

20 Q And by that answer, I take it to mean
21 that you did not care to spend Conservation
22 Chemical funds on removing those drums from the
23 property?

24 A I cared to, I just -- I said higher

1 priorities.

2 Q And as far as the solvents that are
3 contained in those two tanks between the API
4 separator box and tank 20, you also discussed that
5 material outside of Mr. Poisel, didn't you?

6 A I don't recall.

7 Q You never set aside any money to remove
8 those materials, have you?

9 A No.

10 Q Once again, is that because of
11 priorities that you had?

12 A That's right.

13 Q What were those priorities, Mr.
14 Hjersted?

15 A Well, one priority was to either
16 process the silicatetrachloride or put it into
17 another tank. We delayed transferring thinking we
18 could process it, found we couldn't process all of
19 it quickly enough, so we changed the storage tank.
20 You're talking about '85, I think.

21 The second priority was the
22 installation of other storage where tanks were
23 storing the pickle liquor and products plus
24 providing ground sealants, asphalt aggregates,

1 concrete, you know, underneath the tank.

2 Q Where did the cyanide fit into your
3 scheme of priorities?

4 A I think, I wouldn't want to be held to
5 it, but in our own thinking, probably addressing
6 the solvent was the next thing on the list.

7 Q And after that?

8 A Then would be the cyanide.

9 Q And you established the priority,
10 right?

11 A Yes.

12 Q Now, did I understand you to say at the
13 beginning when we were discussing how the facility
14 got established, that you designed --

15 A Well, can I retract that question?

16 Q Referring to the question or the
17 answer?

18 A The answer.

19 MR. RUNDINO: Yes, you can retract
20 it, or qualify it.

21 BY THE WITNESS:

22 A I think the answer is probably all
23 right as it stands. I made the final decision, I
24 certainly discussed with them what they felt, that

1 is the people there, what they felt was their
2 pressing needs, and meeting the environmental and
3 production objectives

4 BY MR. McPHEE:

5 Q And which would you say came first, the
6 environmental or the production needs?

7 A Well, it's not an either/or thing.

8 Q Well, basically the expenditures in the
9 last year that the facility was in operation were
10 for processing as opposed to environmental
11 cleaning up?

12 A That silicatetrachloride had nothing to
13 do with the process.

14 Q Other than retanking the
15 silicatetrachloride, the expenditures of your
16 funds were for processing?

17 A The process kept people there which
18 were giving surveillance.

19 Q Expenditures that you made at the plant
20 during that period of time were for processing,
21 with the possible exception of the
22 silicatetrachloride as opposed to environmental
23 expenditures, is that correct?

24 MR. RUNDINO: During 1985?

1 MR. MCPHEE: During 1985, correct.

2 BY THE WITNESS:

3 A Well, if I can say yes, but it was
4 recognized that the processing took care of
5 certain environmental needs there, which is
6 surveillance of the facility.

7 BY MR. MCPHEE:

8 Q It also generated more material?

9 A Twenty-four hours a day of people being
10 wide awake and on the job.

11 Q And it also generated more material
12 being placed in the lagoon around tank 19?

13 A Yes.

14 Q And that material was the metal
15 hydroxide sludges carrying the chromium and the
16 other metal we talked about, right?

17 MR. RUNDINO: Well, I'm going to
18 object.

19 BY THE WITNESS:

20 A That's a conclusion.

21 MR. RUNDINO: Hold it. I think I'm
22 going to object, I don't think that's been
23 established in the record. My
24 understanding is that the sludges went

1 off-site, liquid material went into basin
2 19.

3 BY MR. MCPHEE:

4 Q Let's pick that up then. What was
5 pumped into basin 19 in the last year of
6 operation?

7 A It was the liquid from the top of -- or
8 from the upper portion of the process sump.

9 Q Depending on how full the sump was,
10 correct?

11 A Yes.

12 Q And so it might contain a fair
13 quantity, perhaps as much as half of the material
14 pumped over there would be the solids?

15 A That's speculative, I mean all you got
16 to do is measure the pounds of stuff in basin 19
17 if you want to know how many pounds there were.

18 Q But during that period of time, during
19 the last year of the operation, when material was
20 being pumped over there it contained some quantity
21 of the precipitants, the lime and the metals that
22 fell out of the solution, correct?

23 A Well, these were metals and according
24 to our review of the liquor we received, it was

1 useable for, from a metal standpoint, for
2 treatment in a sanitary plant, sanitary process --
3 and a potable water plant, and there just was not
4 these other metals you're talking about that we
5 had back in the '70's when we were being paid to
6 dispose of waste.

7 Q But there still is metal present in the
8 liquid that you pump over there, and in fact it is
9 a listed hazardous waste, you wouldn't dispute
10 that, would you?

11 MR. RUNDINO: We would dispute that.

12 MR. McPHEE: You dispute that the
13 material that came to your site was a
14 listed hazardous waste?

15 MR. RUNDINO: Yes.

16 MR. McPHEE: And you dispute that
17 the material that came out of the bottom of
18 your tank is a listed hazardous waste?

19 MR. RUNDINO: Yes.

20 BY MR. McPHEE:

21 Q Why didn't you deposit the records
22 requested under RCRA on the material that was?

23 A Why did we keep records?

24 Q Yes, why did you bother with the

1 personnel records and the operating law and the
2 other things required under the statute and
3 regulation?

4 A My understanding is we were a storage
5 facility for hazardous waste that was kept over
6 from the '70's.

7 Q And then what you submitted on your
8 Part A application listing material as a hazardous
9 waste is not correct as far as the material that
10 you're bringing on site. The items on that
11 application and what you're saying now is not
12 true, and I want to know which is which.

13 MR. RUNDINO: It's neither, and I
14 object to the statement that he lied,
15 unless you can prove it.

16 THE WITNESS: Would you repeat your
17 question.

18 BY MR. MCPHEE:

19 Q What's your basis for the statement
20 your counsel just made that the material you
21 brought onto the facility, the pickle liquor as it
22 came from the plants where it was generated, is
23 not a hazardous waste?

24 MR. RUNDINO: Maybe he doesn't know.

1 You're asking him for a statement I made,
2 maybe he doesn't know.

3 MR. McPHEE: I would like the
4 witness to answer the question, not to have
5 you interject yourself.

6 BY THE WITNESS:

7 A If it's not a hazardous waste, it would
8 be so because it is a select material that's been
9 delisted and is useable by other facilities and
10 was used by other facilities in the purification
11 of water, and that the sludges, residues and the
12 like from this source of iron are of such quality
13 that they're acceptable for any sanitary landfill,
14 land application or what have you, no restrictions
15 on where it's put.

16 BY MR. McPHEE:

17 Q By virtue of the fact that they've been
18 delisted?

19 A I don't want to use -- I used that
20 term, but I would say that from a technical sense
21 or what I know about environmental quality, these
22 were such that the concentrations of any other
23 materials but iron would be such that they would
24 be acceptable to be placed at various locations

1 without restriction, that is landfill application
2 and sanitary landfill, putting it into a land
3 application like sludge from whatever, sludge from
4 a sewage plant, some cases the material is
5 discharged right into the river.

6 Q Subject to a water discharge permit?

7 A Yes, but it's of a quality that it
8 doesn't hurt that discharge permit.

9 Q All right. And am I getting the answer
10 from you that the reason that the material is not
11 a hazardous waste is because in your estimation
12 it's not hazard or because it's been delisted?

13 A You're asking me for kind of a legal
14 conclusion.

15 Q No, I'm asking you, sir, you stated
16 that this material is not a hazardous waste in
17 your estimation, and I would like to understand
18 why you feel that's the case? We're talking now
19 about the pickle liquor that came to your
20 facility.

21 A Well, let me back up a minute. From a
22 legal standpoint, I really don't know, you see.
23 From my engineering standpoint or someone that
24 knows something about water treatment, how this

1 material is used, I can say that the sludges can
2 be and are discharged into a waterway. Can be or
3 are discharged into a land application. Can be or
4 is put into a sanitary landfill. From that
5 standpoint, I would conclude they're not
6 hazardous, but I don't know.

7 Q Have you discussed --

8 A To me this is a legal question.

9 Q Have you discussed with Counsel the
10 question of whether or not the material that you
11 brought inside is a hazardous waste?

12 MR. RUNDINO: Object, that's
13 privileged and I'll instruct him not to
14 answer.

15 MR. MCPHEE: I think the fact of the
16 discussion isn't privilege. The content of
17 the discussion might be.

18 MR. RUNDINO: I will stand on the
19 objection and the instruction.
20 Communications with Counsel are privilege,
21 period.

22 BY MR. MCPHEE:

23 Q Other than your perhaps privileged
24 communications with your counsel about whether or

1 not this material is a hazardous waste, the basis
2 of your assumption that it's not is because it
3 might be discharged under permit to a waterway?

4 A Well, and these other things that I
5 mentioned, the sanitary landfill, to agricultural
6 land.

7 Q Is spent pickle liquor ever placed on a
8 sanitary landfill untreated?

9 A Today?

10 Q Yes.

11 A Not to my knowledge.

12 Q Is spent pickle liquor ever discharged
13 directly into a waterway without treatment?

14 A You're talking about a surface
15 waterway?

16 Q That's right.

17 A Not to my knowledge.

18 Q Now, the treatment of the sludges that
19 you've referred to, are these sludges from the
20 treatment process or pickle liquor?

21 A What's that?

22 Q These sludges that you've been talking
23 about that you say can be placed in a sanitary
24 landfill, is that the result of a treatment

1 process?

2 A That's after neutralization, yes.

3 Q And so is it your testimony at this
4 point that it's your belief that the spent pickle
5 liquor that's brought to your facility is not a
6 hazardous waste?

7 A You've asked that before.

8 Q I don't think I've gotten an answer
9 yet.

10 A I said from a legal standpoint, I don't
11 consider myself an expert in this matter, and I
12 said I don't know.

13 From an environmental standpoint, my
14 knowledge of water treatment, waste treatment,
15 water purification, drinking water standards, the
16 answer is no, it's not.

17 Q And those, of course, are not legal
18 conclusions, correct, those are based on what?

19 A That's right, they're not legal
20 conclusions, they're just what is a practice in
21 water treatment.

22 Q Wouldn't it seem to you to be a legal
23 conclusion that somebody could discharge this
24 material into a waterway?

1 A I'm saying that they do it.

2 Q And they do it under a system of laws
3 and regulations, correct?

4 A I'm sure.

5 Q When a shipment of spent pickle liquor
6 comes to your facility, is it accompanied by a
7 hazardous waste manifest?

8 A I believe so.

9 Q Do you fill that out and pass it along?

10 A I don't.

11 Q You do not fill those out and pass them
12 along?

13 A I don't fill them out, the people at
14 the plant fill them out.

15 Q When a shipment of -- let's go to a
16 shipment. When spent pickle liquor came to your
17 facilities any time since November 19, 1980, was
18 it accompanied by a hazardous waste manifest?

19 A I believe it was.

20 Q And were your people instructed to fill
21 out the hazardous waste manifest and pass it along
22 back to the generator?

23 A I believe they were.

24 Q But you didn't believe that the

1 material that you were dealing with was a
2 hazardous waste?

3 A I didn't say that.

4 Q You did say that, you just stated the
5 term that you believe the spent liquor is not a
6 hazardous waste. Correct me if I'm wrong, but
7 that's what I heard you say.

8 A I said I didn't know from a legal
9 standpoint.

10 Q From a technical standpoint then?

11 A From a technical standpoint of how it's
12 used, I don't consider it hazardous.

13 Q How spent pickle liquor is used or how
14 ferric chloride is used?

15 A When it's properly neutralized it's not
16 hazardous, and if you look at our Part B, we have
17 a screening process and with that screening
18 process and proper neutralization, the resulting
19 sludge is not hazardous.

20 Q And in all cases the material that you
21 dealt with --

22 A I'm not talking about the pickle
23 liquor, really, I'm talking about the sludges that
24 come from that.

1 Q The waste from the pickle liquor
2 treatment process is not in your estimation
3 hazardous in a technical sense?

4 A That's right.

5 Q And when you ship that material
6 off-site, as you testified that you did, you
7 didn't bother to prepare a hazardous waste
8 manifest for it?

9 A You mean our product?

10 Q No, I'm talking about the sludge now.

11 A I don't know, I really don't know how
12 that was handled, I'd have to go back to the
13 record or ask the people about it, I don't know
14 how it was handled.

15 Q You don't know?

16 A No.

17 Q Did you ever run a toxicity test on any
18 of the sludges generated in your operation?

19 A Certainly.

20 Q What were your results?

21 A Negative -- well, not all of them. The
22 stuff that we processed at our plant?

23 Q Right.

24 A It's negative.

1 Q For the stuff you processed and sent
2 out or the sludge that ended up being generated in
3 the process?

4 A Well, I think we're talking about the
5 same thing.

6 Q Are we talking about the sludge now,
7 the material that was -- let's talk about the
8 material that was pumped over to Pond 19 for
9 example.

10 A We're talking about 1985 mostly.

11 Q We're talking about ever since the
12 regulations became effective, which is November
13 19, 1980.

14 A Can you start over, please, I kind of
15 got confused at times.

16 Q All right. Is it your position that
17 the material that you pumped into the area around
18 tank 19 in all instances is a non-hazardous
19 substance, what you're characterizing from a
20 technical viewpoint?

21 A That's my understanding, yes.

22 Q That's your understanding of -- why is
23 it your understanding, on what do you base that
24 understanding?

1 A Because in our policy, our policy was
2 to screen any source of liquor, I mean all sources
3 of liquor, only accept that which met certain
4 criteria as far as concentrations of its
5 components.

6 Q What would you do with the material
7 that didn't meet those?

8 A We didn't buy it. Contrary to what it
9 says in here, as far as I know, we never were paid
10 to take any material into our plant. The stuff
11 that came into our plant, we paid the other
12 people, I mean generators.

13 Q In any event, the material was spent
14 pickle liquor?

15 A Yes.

16 Q Are you aware of whether the material
17 you had been dealing with had been delisted, and
18 therefore no longer covered under the hazardous
19 waste regulations?

20 A Again, that's a legal question.

21 Q It's not a legal question, it's
22 something that you're expected as the owner and
23 operator of a hazardous waste facility to know.

24 MR. RUNDINO: I object to that. Baloney.

1 Is expected to know by who?

2 BY THE WITNESS:

3 A You're asking me --

4 MR. RUNDINO: That's not a question.

5 BY MR. MCPHEE:

6 Q It is a question, I want to know, Mr.
7 Hjersted, whether you're aware whether the
8 material that you brought to your facility has
9 been a delisted material and therefore no longer
10 subject to the regulations under RCRA except for
11 the standards that apply to all solid wastes?

12 A I know that these regulations and their
13 interpretations are so complex that I personally
14 cannot master all of them and their intricacies,
15 and I really rely on other people to advise me on
16 that.

17 Q Who do you rely on?

18 A Well to an extent we have another
19 engineer in our company, in our sister company, we
20 have --

21 Q Which sister company, who is that?

22 A That would be Mr. Connolly.

23 Q And the company is?

24 A Midland Resources.

1 Q And who else?

2 A And Mr. Kaiser.

3 Q Who is the -- general manager of
4 Conservation Chemical, am I correct?

5 A One of his primary duties is to procure
6 chemical raw material.

7 Q And does he make what you're
8 characterizing as legal judgments about what the
9 scope of the regulations are with respect to the
10 material that you're dealing with?

11 A I would say that he's more of an expert
12 on that than I. I'm not shifting my
13 responsibility, but we tend to try to become
14 expert in various segments of this company.

15 Q Where is your expertise?

16 A Water treatment.

17 Q Water treatment or --

18 A Yes.

19 Q In other words, your expertise is in
20 making ferric chloride for water treatment?

21 MR. RUNDINO: I object, that's not
22 what he said.

23 MR. MCPHEE: I'm trying to find out
24 what he said.

1 BY THE WITNESS:

2 A My expertise is in water treatment, how
3 this material is used, where it's used.

4 BY MR. MCPHEE:

5 Q That is the ferric chloride that you
6 produce in the facility?

7 A And other material for water
8 purification.

9 Q And you've also had some expertise
10 developing over the years in cyanide treatment
11 technology, correct?

12 A Yes, well I was trying to reconstruct
13 our, you know, our exploration to the Gary
14 facility. The Gary facility we never treated
15 cyanide.

16 Q But you ended up with a fair amount of
17 it there, correct?

18 A Yes.

19 Q And in the course of your operation at
20 Conservation Chemical in Missouri, you were
21 treating cyanide, weren't you?

22 A Yes.

23 Q A lot of it?

24 A Right.

1 Q And you consider yourself to be an
2 expert in the treatment of cyanide, wouldn't you?

3 A Realtively speaking.

4 Q As far as other processes, you had a
5 number of other ideas for different kinds of
6 treatment that you conduct at Gary, correct?

7 A Yes.

8 Q And in fact the Gary plant, the process
9 that's laid out there is your design, correct?

10 A I don't -- I can't say that. My God, a
11 lot of the stuff was there even when I came there.

12 Q I understand that, but the uses that
13 you put the material to, was your plan, your idea,
14 right?

15 A Yes.

16 Q And during the period that the place
17 was being converted from a refinery operation to
18 the operation that's obtained there for all these
19 years for treatment of pickle liquor, you
20 supervised the construction and design of the
21 facility, right?

22 A To some extent, but not entirely.

23 Q Well, the largest proportion of it, you
24 would say it was your -- would you say in your

1 control, in other words, you controlled the --

2 A I'm the owner, I'm responsible, if
3 that's what you want me to say.

4 MR. RUNDINO: That's not what he
5 wants you to say, he wants you to tell him
6 the truth.

7 MR. MCPHEE: That's exactly what I
8 want.

9 BY THE WITNESS:

10 A Well it's hard to answer without any
11 philosophising.

12 BY MR. MCPHEE:

13 Q I understand.

14 A I was in World War II, I was an
15 officer, an ensign.

16 Q I was in Viet Nam. I was a grunt.

17 A I had authority over my men and what
18 they should do, but I never had complete control.

19 Q But largely you had control, correct,
20 you directed what happened at the site?

21 A Yes.

22 Q And you continued to direct it all the
23 way through the closure of the site?

24 A Well, no officer or executive ever has

1 complete control. Yes, I had control.

2 Q Now, as far as contracts you had with
3 other facilities, let's call them agreements or
4 arrangements, would you have personal dealings
5 with the sources of pickle liquor?

6 A In the '80's, no.

7 Q But prior to that you did?

8 A Yes.

9 Q And prior to that you had?

10 A Partially.

11 Q And prior to that you also had dealings
12 with the sources of the chromic acid that came to
13 the facility?

14 A Partially, but just to be very complete
15 about answering your question, probably after the
16 '70's, I had less -- relatively minor sales
17 dealings with waste generators.

18 Q With reference to the Gary facility?

19 A Yes.

20 Q But you continued to have those kinds
21 of dealings, right?

22 A Yes.

23 Q And you entered into other contracts on
24 behalf of the Gary facility too, right?

1 A I'm trying to think of what contract we
2 had.

3 Q For services, for --

4 A You're going back into the '70's now.

5 Q Well over the whole period of the
6 operation of the site?

7 A Well, like I said, I had some of the
8 dealings to do with that, not all.

9 MR. McPHEE: Let's mark this as
10 Exhibit 3.

11 (Whereupon said document was marked
12 as Plaintiff's Deposition Exhibit
13 No. 3 for identification, 3/14/86,
14 J.S.)

15 BY MR. McPHEE:

16 Q I'll ask you to look that document over
17 and tell me if you recognize it?

18 A This is a plot plan of the facility.
19 There's an inscription, something, something, C,
20 6/22/72 on one side, the left-hand side.

21 Q Have you ever seen that document
22 before?

23 A I don't recall.

24 Q Directing your attention to the site

1 plan that's on there now. There are a number of
2 basins indicated on the site. Can you tell me,
3 for example, what basin number 4 was used for?

4 A I didn't even think we had one, a basin
5 4. I thought that what's called basin 2 and basin
6 4 was the -- what I called the spill control for
7 22. You see, this cooling tower is more or less
8 -- it's pretty close to tank 22 on this thing, and
9 to the right, and on the other drawings it's quite
10 a ways over to the left.

11 Q Did you ever have any basin denominated
12 number 4 or 2 or 5?

13 A I don't recall. Basin 5, I would say
14 should be part of 19, although 19 -- the basin
15 around 19 always went around here, as I recall.

16 Q So 19 has always been in the area
17 that's marked basin 19?

18 A I would think so. And basin 6 is where
19 the pie basin is.

20 Q But you never had any basins that were
21 denominated this way or any drawings that were
22 prepared by Conservation Chemical?

23 A I don't recall any, and as I say, I
24 certainly can't recall if there was any -- two

1 separate basins in -- what I call basin 22.

2 Q All right.

3 THE WITNESS: Can I take a one-minute
4 break.

5 (Short recess.)

6 MR. MCPHEE: Mark this, please.

7 (Whereupon said document was marked
8 as Plaintiff's Deposition Exhibit
9 No. 4 for identification, 3/14/86,
10 J.S.)

11 BY MR. MCPHEE:

12 Q I'd like you to look at what's been
13 marked as Deposition Exhibit 4, tell me if you
14 recognize that document?

15 A Well, I can read it, it's a letter from
16 Mr. Chapman to a Mr. Painkin.

17 Q It's a cover letter for a closure plan,
18 1981, correct?

19 A Yes.

20 Q Did you work on that closure plan or
21 approve it?

22 A Let me read the whole thing.

23 Q First, the methylene chloride
24 hydrocarbon mixture that you talk about in

1 hazardous materials in inventory, item 2 or the
2 first page of the closure plan, that's still there
3 on the site?

4 A Yes.

5 Q Have you had any luck selling that
6 material?

7 A No.

8 Q Do you anticipate you're going to be
9 able to sell that material?

10 A I think -- you mean in a net gain is
11 what you mean by selling?

12 Q What I'm trying to get at is what do
13 you anticipate at this point you're going to do
14 with that material when you close down the
15 facilities?

16 A Well, let me put it this way. I would
17 think the person that takes it -- what I know the
18 best way of handling this particular thing is
19 reviewing the recyclers once more, there's quite a
20 few new ones that have been established that could
21 use that.

22 And the second step is that there's
23 people that are now working on processing this so
24 that it can be used for source of energy and

1 chlorides in cement manufacture.

2 And on the third category, would be
3 straight disposal at that facility that does
4 incineration. At one time we had planned to use
5 an incinerator that we purchased from Western
6 Electric to convert this to what we call a heat
7 recovery unit, and pump sump material and
8 concentrate pickle liquors, but events have
9 overcome that, maybe the airport expansion --

10 Q What's happening with the airport
11 expansion at this point?

12 A I heard they bought up the land for the
13 east-west runway.

14 Q They hadn't made any offers to you or
15 tried to condemn your property?

16 A They've made offers -- yes, east-west
17 runway. I hadn't heard from them lately, I'd say
18 probably a year.

19 Q Now, at some point we were talking
20 about the potential liability to former owners and
21 also insurers for the cost that might be
22 associated with cleaning up and closing down this
23 particular facility.

24 Have you had discussions with the

1 insurer on the subject recently?

2 A We've notified them, you know, by
3 letter.

4 Q Have they responded?

5 A I've got some answers back, not all,
6 probably a minority of answers, I think there's
7 something like 17, and we've --

8 Q 17 insurers or --

9 A 17 insurers, and maybe half a dozen
10 answers, just approximate.

11 Q Have you had offers of payments from
12 any of the insurance companies?

13 A For cleaning up, no.

14 Q For any purpose, have you had any
15 offers of clean-up?

16 A For determining the legal ramifications
17 of this, yes.

18 Q And have any of the insurance companies
19 agreed to defend you in this action?

20 A Yes.

21 Q And are they providing any other funds
22 to you, either for clean-up or --

23 MR. RUNDINO: Read that answer back.

24 (Record read as directed.)

1 MR. RUNDINO: The question was have
2 any insurance companies agreed to defend
3 you in this action.

4 BY THE WITNESS:

5 A I think they have. It's a little
6 obscure to me what they're going to do, but I
7 think they have, yes.

8 BY MR. MCPHEE:

9 Q Have they agreed to provide funding for
10 a closure plan for the facility?

11 A No.

12 Q What purpose is that that they agreed
13 to provide funding for for the site?

14 A Just what I would call identification
15 of the legal status, which that includes defense
16 in this particular action.

17 MR. RUNDINO: I'm going to object to
18 the line of questioning, I don't think the
19 witness is qualified to determine status of
20 the insurance company.

21 MR. MCPHEE: I wasn't asking about
22 the status of an insurance company.

23 MR. RUNDINO: Or status of insurance
24 claims.

1 BY THE WITNESS:

2 A We got this letter, it's really hard to
3 follow.

4 BY MR. MCPHEE:

5 Q Have you discussed that with any other
6 people at Conservation Chemical?

7 A The insurance, no.

8 Q So you've been relying on counsel, I
9 guess, in your discussing of the insurance aspect
10 of this matter?

11 A Counsel, yes.

12 Q Well, we will be laying a formal
13 discovery request on you, but obviously we're
14 going to want to see all the insurance policies as
15 we go along.

16 Now, would you submit that this is your
17 closure plan at present, looking at the document
18 that's before you?

19 A No.

20 Q And would the cost estimate that you
21 provided there, which I guess is only for the
22 disposal of cyanide was of \$25,000.00 be anything
23 like what it might cost to close this particular
24 facility?

1 A No.

2 Q Are you planning to close the facility?

3 A We've closed it, we've discontinued our
4 operations.

5 Q But you hadn't closed it in the sense
6 that RCRA talks about?

7 A No, no.

8 Q But is it your intention to close the
9 facility in the sense that the RCRA regulations
10 talk about?

11 A Yes.

12 Q Is it your intention to prepare a
13 closure plan for the facility?

14 A It's being done.

15 Q Have you retained a contractor to do
16 that?

17 A Yes.

18 Q Who is that, Atech?

19 A Yes.

20 Q Have you submitted notification to the
21 State of Indiana that you ceased operations out
22 there?

23 A I wrote the letter.

24 MR. RUNDINO: Yes, they've been

1 notified.

2 BY THE WITNESS:

3 A I told them orally some time ago.

4 BY MR. MCPHEE:

5 Q In what context?

6 A Well, I think there were two occasions,
7 one when I got back with Ms. Long, and she'd been
8 asking for an interview or a meeting, and I wanted
9 to follow through and see what happened to that.

10 Q That was in connection with the State
11 Administrative Proceeding?

12 A Yes.

13 Q That was some time ago then?

14 A Yes, that was in probably late December
15 or early January, sometime in there. And I think
16 when I asked her advice from a -- I got notes
17 somewhere that just are on what I should do about
18 this spill that I noted in January. I mentioned
19 that we'd been down, but as I said, I wrote a
20 letter recently, you know, and sent it to Mr.
21 Rundino to see that it would be done properly.

22 Q The spill in January, which spill is
23 that, the spill from tank 19?

24 A No, that was what I call -- what would

1 appear to be a solvent spill. I reported that to
2 you over the phone.

3 Q Okay.

4 MR. McPHEE: Mark this. Exhibit 5.

5 (Whereupon said document was marked
6 as Plaintiff's Deposition Exhibit
7 No. 5, 3/14/86, J.S.)

8 BY MR. McPHEE:

9 Q I'd like you to examine Deposition
10 Exhibit 5 and tell me if you recognize that
11 document?

12 Do you recognize the document, sir?

13 A I can identify the document, I don't
14 recall the details.

15 Q Why don't you identify it for me as
16 best you can?

17 A It's a memorandum for record dated
18 January 18th, 1982, concerning a discharge from
19 solvent tank 1-S, and the date of the leak was on
20 December 22, 1981.

21 Q Was this report prepared by
22 Conservation Chemical?

23 A The way it read, I would assume that.

24 Q You've never seen this document before?

1 A I know a lot of the details that are in
2 this, so I don't want to say that I have or have
3 not, I just don't recall it.

4 Q Do you know who prepared it, have you
5 got any idea?

6 A Well, I would assume again Dale Chapman
7 did. Dale would have been the plant manager.

8 Q Do you happen to know what the original
9 volume of material in tank 1-S was?

10 A Not offhand, no.

11 Q Do you know what kind of material was
12 contained in tank 1-S?

13 A As I said, solvents, I don't know the
14 exact nature.

15 Q Chlorinated or non-chlorinated?

16 A I said I don't know.

17 Q Now, there's a reference at the bottom
18 of that page in the last paragraph on the first
19 page to the fact that Conservation Chemical's
20 normal hours are 8:00 a.m. to 4:30 p.m. Can
21 you explain what that means?

22 A Well, it's a little hard to follow.
23 There was a -- if there's a period after the p.m.,
24 it has one meaning. And the other way, it has

1 another one.

2 But I think what it means, or what it
3 says, is that prior to the incident that the
4 normal hours were 8:00 to 4:30.

5 Q Does that mean there would be personnel
6 on the site at all times, or only there from 8:00
7 to 4:30 at this period?

8 Are you aware of any time when people
9 were not at the site 24-hours a day?

10 A Oh, yes, yes.

11 Q And when would those times have been?

12 A I would guess at probably the last half
13 of the '70's and maybe the first few years of the
14 '80's, I'm guessing, in that range.

15 Q You were working only one shift at that
16 point?

17 A One or two, yes. What was done really
18 is identifies whether they're talking about office
19 personnel or supervisory personnel or operators.

20 Q Who reported this particular spill to
21 you, do you recall?

22 A No, I don't, but it normally would have
23 been Mr. Chapman, that would be the normal
24 contact.

1 MR. MCPHEE: Mark this.

2 (Whereupon said document was marked
3 as Plaintiff's Deposition Exhibit
4 No. 6, 3/14/86, J.S.)

5 BY MR. MCPHEE:

6 Q Would you please examine that for me.
7 That purports to be the closure plan on your Part
8 A submission to the Agency.

9 A The first or the second one?

10 Q The second one. Actually maybe you
11 should tell me that.

12 A Well, rather than me reading, I think I
13 would guess this is the first one, without --
14 what's your question and then I'll read it.

15 Q You would contend that's your presently
16 effective closure plan for the facility, is that
17 right?

18 A That's right.

19 Q And that the cost -- look at the last
20 page, the cost estimate for closure, the next to
21 the last page, I guess.

22 A A quarter of a milllion dollars.

23 Q And is that anywhere close to what you
24 would currently estimate the closure cost of the

1 facility to be?

2 A No.

3 Q It's lower by a substantial order?

4 A No, but it's lower.

5 MR. MCPHEE: Mark this.

6 (Whereupon said document was marked
7 as Plaintiff's Deposition Exhibit
8 No. 7, 3/14/86, J.S.)

9 BY MR. MCPHEE:

10 Q Before we leave the closure plan, you
11 reviewed that as part of the Part B application
12 when you signed it?

13 A Yes.

14 Q And you signed as president of
15 Conservation Chemical and you submitted the Part B
16 to the Agency?

17 A I said that because I signed them all.
18 To be thorough, I should look at it in the context
19 of the whole thing.

20 Q Do you recognize that document, that
21 has been marked as Exhibit 7?

22 A There's no date, it's signed by Mr.
23 David, the former plant manager, dated 4/7/75.

24 Q It's on Conservation Chemical

1 letterhead, is that right, is that correct?

2 A Yes, it's entitled "Analysis of Sludge
3 Waste."

4 Q Do you have any recollection of that
5 document, sir?

6 A Let me read it.

7 Well, it's -- what was your question?

8 Q Do you recognize the document?

9 A No, I don't. I could identify it, it's
10 just sort of a memo, a status of waste treatment.

11 Q That contains some information on what
12 might be present in sludges generated by the
13 facility, is that correct?

14 A At that time.

15 Q Do you know any reason whether the
16 information in there is false or not correct?

17 A For that time?

18 Q Right.

19 A Well, let me see, that says -- it shows
20 a thousand ppm of chrome, or actually it shows
21 one-tenth of a percentage, and I think that's a
22 thousand -- or is that a hundred -- yes, a
23 thousand parts per million of chrome and two
24 thousand of iron, and I would think that typically

1 that would be low for iron and high for chromium,
2 you know.

3 Q But this was prepared by Mr. Davis,
4 right, and sent out -- I don't know where it was
5 sent, but in any event, it reflects what Mr.
6 Davis understood to be the content of the sludge?

7 A Well, normally you don't report metals
8 as percentages, you know, in this context.

9 Q This is 1975, correct?

10 A Well, even then, you know. Fluoride,
11 2,000 ppm. I would doubt that, you know, that's
12 really -- that's as high as iron.

13 Q These sludges would have been --

14 A We didn't take any fluorides in like
15 that.

16 Q These sludges would have been the
17 sludges generated from either the pickle liquor
18 treatment or the complexing operation?

19 MR. RUNDINO: Or both.

20 BY MR. MCPHEE:

21 Q Or both?

22 A Yes, but you see the ratio relationship
23 of fluoride to iron or iron to chromium is not
24 what I would think it would be.

1 Q With the caveat that you just stated,
2 would that be a fair representation of the metal
3 content of the sludges that were being generated
4 at that time?

5 A I don't think it's -- it doesn't
6 conform to my memory of what we would have had or
7 what I would expect to have.

8 Q But it was contemporaneously produced
9 back in 1975 -- it was contemporaneously produced
10 back in 1975 by Mr. Davis, correct?

11 A Well, this is what it says, but these
12 relationships wouldn't exist. You wouldn't have
13 that high a chloride in a solid base, you see, 40
14 percent.

15 MR. McPHEE: It's 2:00 o'clock right
16 now.

17 MR. RUNDINO: This is a good place
18 to stop.

19 MR. McPHEE: I'd like to state for
20 the record that we obviously haven't
21 completed the discussion that we have to
22 have with Mr. Hjersted concerning his
23 knowledge of the events surrounding the
24 matters at issue in this case, and we'd

1 like to continue this deposition by
2 agreement to a later point.

3 MR. RUNDINO: I understand you're
4 not finished deposing Mr. Hjersted.

5 (Whereupon the taking of the above
6 deposition was adjourned sine die.)

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA

Sierks u
FILED

JAN 8 1986

At _____
RICHARD E. TIMMONS, CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CONSERVATION CHEMICAL COMPANY
OF ILLINOIS and NORMAN B. HJERSTED,

Defendants.

CIVIL ACTION NO. H86-9

COMPLAINT

Plaintiff, United States of America, on behalf of the Administrator of the U.S. Environmental Protection Agency (hereinafter "U.S. EPA"), alleges the following:

NATURE OF ACTION

1. This is a civil action for preliminary and permanent injunctive relief and for the imposition of civil penalties pursuant to Sections 3008(a) and (g) of the Resource Conservation and Recovery Act, as amended (hereinafter "RCRA"), 42 U.S.C. §§6928(a) and (g), arising from defendants' failure to comply with the requirements of RCRA for hazardous waste disposal facilities. Specifically, the United States seeks an order enjoining defendants Conservation Chemical Company of Illinois and Norman B. Hjersted from placing hazardous wastes into four land disposal units located at and near defendants' hazardous waste disposal facility, requiring defendants to submit and implement proper closure and post-closure plans for those land disposal units and for the facility as a whole,

9-11-2-136
DEPARTMENT OF JUSTICE - R

JAN 14 1986

requiring defendants to comply with regulations under RCRA, and enjoining operation of the facility until defendants obtain a final hazardous waste facility permit under RCRA. The United States also seeks an order imposing civil penalties upon defendants for their violations of RCRA.

JURISDICTION AND VENUE

2. This court has jurisdiction over this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. §6928(a), and 28 U.S.C. §§1331, 1345 and 1355. Pursuant to 42 U.S.C. §6928(a) and 28 U.S.C. §1391(b), venue is proper in this district because the defendants' hazardous waste facility is located in this district and because the violations occurred in this district.

3. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. §6928(a)(2), the State of Indiana has been notified of the commencement of this action.

DEFENDANTS

4. Defendant Conservation Chemical Company of Illinois (hereinafter "CCCI") is a corporation organized under the laws of the State of Missouri. CCCI owns or operates a hazardous waste facility located at 6500 Industrial Highway, Gary, Indiana (hereinafter "Gary site" or "Gary facility"), at which hazardous wastes have been generated, stored, treated, and disposed. The Gary facility includes four surface impoundments into which defendants have placed hazardous wastes. Each of the four surface impoundments is a hazardous waste "disposal facility" within the meaning of 320 Indiana Administrative Code ("IAC") 4.1-1-7.

5. Defendant Norman B. Hjersted (hereinafter "Hjersted"), an individual, is the President and principal stockholder of CCCI. At times relevant hereto, Hjersted was responsible for the overall operation of the Gary site. Hjersted directed and controlled expenditures for repairs, improvements, and operations at the Gary site in excess of \$500.00 per month and made decisions concerning environmental compliance at the Gary site. Hjersted is an "operator" of the Gary facility within the meaning of 320 IAC 4.1-1-7.

STATUTORY AND REGULATORY BACKGROUND

6. RCRA was enacted on October 21, 1976. The statute establishes a regulatory program for the management of hazardous wastes. 42 U.S.C. §6902 and §6921 et seq. U.S. EPA has promulgated regulations under RCRA governing facilities that manage hazardous waste. These regulations are codified at 40 C.F.R. Parts 260-271.

7. Section 3005 of RCRA, 42 U.S.C. §6925, generally prohibits the operation of any hazardous waste facility except in accordance with a permit. Section 3005(e) of RCRA, 42 U.S.C. §6925(e), further provides that a hazardous waste facility which was in existence on November 19, 1980 may obtain "interim status" to continue operating until final action is taken by U.S. EPA or

an authorized State with respect to its permit application, so long as the facility satisfies certain conditions specified in that section. Those conditions include filing a timely notice with U.S. EPA that the facility is treating, storing, or disposing of hazardous waste, and filing a timely application for a hazardous waste permit. The owner or operator of a facility with interim status must comply with 40 C.F.R. Part 265 or equivalent state regulations.

8. Section 213(a) of the Hazardous and Solid Waste Amendments of 1984, P.L. 98-616, 96 Stat. 3221 (codified at 42 U.S.C. §6925(e)(2)), provides that by November 8, 1985, the owner or operator of a land disposal facility which was granted interim status by November 8, 1984, shall: (a) apply for a final determination of its permit application and (b) certify that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements. Section 3005(e)(2) specifically provides that the failure to meet these requirements shall result in the automatic termination of the land disposal facility's interim status.

9. Section 3006 of RCRA, 42 U.S.C. §6926, provides that a State may obtain Federal authorization to administer the RCRA hazardous waste management program in that State.

10. On August 18, 1982, U.S. EPA granted to the State of Indiana Phase I interim authorization under Section 3006 of RCRA to carry out certain portions of the RCRA hazardous waste management program in Indiana. At this time, the State program

includes those regulations covering the operation of interim status facilities, including groundwater monitoring requirements, financial responsibility requirements, and closure and post-closure standards, which are set forth at 320 IAC 4.1 Rules 1 through 32.

11. Those standards and requirements contained in the hazardous waste management program for which the State of Indiana has been granted authorization by U.S. EPA are enforceable by the federal government pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. §6928(a)(2).

THE SITE AND SITE OPERATIONS

12. The Gary site is a four-acre parcel of land located in an industrial area of Gary, Indiana. The site is bounded on the west and southeast by the Elgin, Joliet, and Eastern Railroad (hereinafter "EJ&E Railroad") rights of way, and on the northeast by a vacant industrial lot. The Gary Municipal Airport borders the site along the southeast side. The Grand Calumet River flows in a northeasterly direction approximately one mile south of the site. A map of the site is attached as Exhibit A.

13. The four land disposal units at the Gary facility are identified on Exhibit A as Basin T-19, Basin T-22, the "Offsite Basin" and the "pie basin." Basins T-19 and T-22 are diked areas creating two large storage impoundments. The "Offsite Basin" is in an area adjacent to the western boundary

of the Gary site, located upon property owned by the EJ&E Railroad. Basins T-19 and T-22 and the Offsite Basin are "surface impoundments" within the meaning of 320 IAC 4.1-1-7. The "pie basin", which is located in the southeastern corner of the site, is both a "surface impoundment" and a "waste pile" within the meaning of 320 IAC 4.1-1-7.

14. Since April, 1967, materials have been brought to the site for treatment, storage, or disposal. These materials contained cyanide and acids, including spent pickle liquor; drums containing various chemical wastes and halogenated and non-halogenated solvents; separator sludge, and slop oil emulsion solids. These materials are "hazardous wastes" within the meaning of Section 1003(5) of RCRA, 42 U.S.C. §6903(5), and the implementing regulations at 320 IAC 4.1-3.3.

15. Since April, 1967, the defendants have placed hazardous wastes into the four surface impoundments located at and near the site. The four surface impoundments contain hazardous wastes whose constituents include high concentrations of heavy metals including chromium, cadmium, zinc, mercury, arsenic, and lead.

16. Since April, 1967, the defendants have placed hazardous wastes into tanks located at the site. Hazardous wastes have leaked and spilled from these tanks onto the ground and into surface impoundments at and near the site.

ENFORCEMENT HISTORY

17. On September 28, 1985, U.S. EPA issued to CCCI and other persons an administrative order pursuant to Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act (hereinafter "CERCLA"), 42 U.S.C. §9606. In the Administrative Order, U.S. EPA directed respondents to remove and dispose of certain hazardous wastes contained in approximately forty leaking and deteriorating tanks and in several hundred drums at the Gary facility. In addition, U.S. EPA is conducting a response action at the Gary facility, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, in which U.S. EPA is removing several hundred thousand gallons of PCB-contaminated waste oil from the Gary site. The CERCLA administrative order and the response action involve the Gary site but do not address the activities and contamination described in Paragraphs 14 through 16 above.

18. On August 20, 1985, the State of Indiana filed an administrative complaint against CCCI alleging violations of RCRA regulations at the Gary facility, which include the failure to install and implement a groundwater monitoring system, and violations of requirements for inspection and reporting, security, and freeboard and protective cover for surface impoundments. There has been no order for final relief entered in the state's action.

ATTAINMENT OF INTERIM STATUS

19. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. §6930(a), on August 18, 1980, the defendants notified U.S. EPA that hazardous wastes were being treated, stored, or disposed at the Gary site. Thereafter, pursuant to Section 3005(a) of RCRA, 42 U.S.C. §6925(a), and 40 C.F.R. §270.10, on November 18, 1980, the defendants submitted the first part ("Part A") of an application for a permit to treat, store or dispose of hazardous wastes at the Gary site.

20. By virtue of the notification to EPA and the submission of the Part A permit application, the Gary facility was accorded "interim status" under Section 3005(e)(1) of RCRA,

42 U.S.C. §6925(e)(1). [REDACTED]

40 C.F.R. §270.70(a).

21. As the owners or operators of a hazardous waste facility with "interim status," defendants were required to comply with the Interim Status Standards For Owners and Operators of Hazardous Waste Facilities at 40 C.F.R. Part 265 and, after State authorization, the State regulations which then applied, 320 IAC 4.1 Rules 1 through 32.

LOSS OF INTERIM STATUS

22. Section 3005(e)(2) of RCRA, 42 U.S.C. §6925(e)(2), requires that defendants, as owners or operators of a land disposal facility with interim status, submit the second part, "Part B", of the permit application and certify compliance with

the applicable ground-water monitoring and financial responsibility requirements of RCRA on or before November 8, 1985. Section 3005(e)(2) further provides that, if defendants fail to comply with that provision, land disposal units at the facility would lose interim status.

23. The defendants did not submit any of the certifications required by Section 3005(e)(2) of RCRA, 42 U.S.C. §6925(e)(2).

24. Because it failed to make the required certifications, on November 8, 1985, the Gary facility lost its interim status to introduce hazardous waste into the four land disposal units at the Gary site.

25. Pursuant to Section 3005(e)(2) of RCRA, 42 U.S.C. §6925(e)(2) and 320 IAC 4.1-21-1 through 4.1-21-10, defendants are required to submit proper closure and post-closure plans for the four land disposal units to U.S. EPA and the State of Indiana no later than 15 days after termination of interim status.

26. Defendants did not submit proper closure and post-closure plans for the land disposal units at the Gary facility.

INTERIM STATUS REQUIREMENTS

27. Pursuant to Sections 3005(a) and 3006 of RCRA, 42 U.S.C. §§6925(a) and 6926, defendants are required to comply with regulations governing facilities with interim status.

28. Defendants have violated and continue to violate interim status requirements applicable to their facility in the following respects:

(a) Defendants have failed to implement a groundwater monitoring program capable of determining the Gary facility's impact on the uppermost aquifer underlying the facility as required by 320 IAC 4.1-20-1 through 20-5.

(b) Defendants have failed to comply with the financial assurance requirements applicable to the facility as required by 320 IAC 4.1-22-35.

(c) Defendants have failed to include in the contingency plan for the Gary facility a list of all emergency equipment located at the facility, including a description of the location and a brief outline of the capabilities of the equipment as required by 320 IAC 4.1-18-3(e).

(d) In their operating records for the Gary facility, defendants have failed to provide the description and quantity of each hazardous waste received and the method of treatment, storage or disposal of each such waste as required by 320 IAC 4.1-19-4(b).

(e) Defendants have failed to provide 24-hour site security or an adequate artificial or natural barrier to control entry to the Gary facility as required by 320 IAC 4.1-16-5(b).

(f) Defendants have failed to manage hazardous wastes at the Gary facility so as to prevent fire, explosion or release of those wastes that could threaten human health or the environment. Defendants' management of hazardous waste has resulted in numerous spills and discharges of hazardous wastes at the facility, including a spill of at least 500 gallons of cyanide and 10,000 gallons of PCB-contaminated waste oil as required by 320 IAC 4.1-17(2).

(g) When hazardous wastes were spilled or released at the Gary facility, defendants have failed to identify the character, exact source, amount, and extent of spilled or released materials as required by 320 IAC 4.1-18-7(j).

(f) Defendants have failed to maintain a minimum of 60 centimeters (two feet) of freeboard in tanks and surface impoundments at the Gary facility as required by 320 IAC 4.1-25-2 and 25-3.

(g) Defendants have failed to provide a protective cover for earthen dikes used to create surface impoundments at the Gary facility as required by 320 IAC 4.1-20-1 through 20-5.

29. Pursuant to 320 IAC 4.1 Rules 15-25 the requirements listed in Paragraph 28 above remain applicable to the Gary facility throughout its life, including closure and post-closure care periods after cessation of waste treatment or disposal or other active operation.

30. Defendants have admitted the violations alleged in subparagraphs 28 (c), (e) and (g) above.

FACILITY CLOSURE REQUIRED

31. Pursuant to 320 IAC 4.1-21-3(a), the owner or operator of a hazardous waste facility must have a written closure plan which meets the requirements of that section.

32. Pursuant to 320 IAC 4.1-21-3(b), the owner or operator of a hazardous waste facility is required to amend his closure plan whenever there is a change in the expected year of closure of the facility.

33. Pursuant to 320 IAC 4.1-21-3(c), the owner or operator of a hazardous waste facility is required to submit a proper closure plan for the facility at least 180 days before the date he expects to begin closure of the facility and no later than 15 days after termination of interim status or issuance of a judicial decree or compliance order to cease receiving wastes or close.

34. Pursuant to 320 IAC 4.1-21-3(c), closure shall commence within thirty days after the date on which the owner or operator expects to receive the final volume of wastes.

35. Pursuant to 320 IAC 4.1-21-4(a), the owner or operator of a hazardous waste facility is required to treat, remove from the site or dispose of all hazardous wastes at the facility in accordance with an approved closure plan within 90 days after receiving the final volume of hazardous waste, or within 90 days after approval of the closure plan, whichever is later.

36. Pursuant to 320 IAC 4.1-21-7(a), the owner or operator of a hazardous waste facility is required to implement a post-closure plan for the facility upon completion of closure and continue post-closure care for 30 years thereafter.

37. On July 13, 1984, the defendants submitted to Indiana and EPA a closure plan for the Gary facility. On January 30, 1985, EPA notified the defendants that their closure plan was deficient, did not comply with RCRA and the applicable regulations, and required defendants to submit a revised plan.

38. On May 14, 1985, the defendants submitted to Indiana and EPA a revised closure plan for the Gary facility. At a meeting with EPA on December 20, 1985, EPA advised the defendants that the revised plan was deficient. Defendants have admitted that the revised plan is deficient.

39. After December 20, 1985, the defendants received no additional hazardous wastes at the Gary facility.

40. On December 20, 1985, the defendants ceased the treatment of hazardous wastes at the Gary facility.

41. At a meeting with EPA on December 20, 1985, defendant Hjersted stated his intention to remove valuable assets from the Gary facility to a warehouse in Kansas City, Missouri.

42. Defendants have never submitted a closure plan which comports with the requirements.

FIRST CLAIM FOR RELIEF

43. Paragraphs 1-26 above are incorporated here by reference.

44. Defendants' failure to certify by November 8, 1985 that the land disposal units at the Gary facility are in compliance with all applicable groundwater monitoring and financial responsibility requirements of RCRA and the applicable regulations resulted in the automatic loss on that date of "interim status" authorization to treat, store, or dispose of hazardous waste at the four land disposal units at the Gary facility.

45. Defendants' failure to submit proper closure and post-closure plans for the land disposal units at the Gary facility within 15 days after the loss of interim status is a continuing violation of RCRA and the applicable Indiana regulations at 320 IAC 4.1 Rule 21.

SECOND CLAIM FOR RELIEF

46. Paragraphs 1-21 and 27-30 above are incorporated here by reference.

47. As alleged in Paragraph 28 above, the defendants violated and are continuing to violate "interim status" regulations applicable to the Gary facility. These violations are continuing violations of RCRA and the applicable Indiana regulations.

THIRD CLAIM FOR RELIEF

48. Paragraphs 1-21 and 31-41 above are incorporated here by reference.

49. Defendants' failure to submit a proper closure and post-closure plan is a continuing violation of RCRA and the applicable Indiana regulations at 320 IAC 4.1 Rule 21.

50. Pursuant to Sections 3008(a) and 3008(g) of RCRA, 42 U.S.C. §§6928(a) and 6928(g), defendants, as owners or operators of the Gary facility and its land disposal units, are liable for injunctive relief to prevent further violations of the Act and for civil penalties of up to \$25,000 per day of violation.

51. Injunctive relief is necessary to assure that the Defendants will comply with RCRA and the applicable regulations including requirements to submit and implement proper closure and post-closure plans for the Gary facility and its land disposal units.

WHEREFORE, the United States requests that the Court grant it the following relief:

A. Preliminarily and permanently enjoin defendants CCCI and Hjersted from introducing any hazardous wastes into any land disposal unit at the Gary facility;

B. Preliminarily and permanently enjoin defendants CCCI and Hjersted from introducing, generating, treating, storing, or disposing of any hazardous waste at the Gary facility until they obtain a final hazardous waste facility permit under RCRA;

C. Order defendants CCCI and Hjersted to inventory and account for any asset removed from the Gary facility;

D. Order defendants CCCI and Hjersted, on or before January 20, 1986, to design a groundwater monitoring system for the Gary facility which meets the requirements of RCRA and the applicable regulations and to complete the installation of that system within ninety (90) days after approval of the design by U.S. EPA and the State of Indiana;

E. Order defendants CCCI and Hjersted, on or before January 20, 1986, to comply with all applicable financial responsibility requirements of RCRA;

F. Order defendants CCCI and Hjersted to submit to U.S. EPA and the State of Indiana for their approval or modification, and to implement as approved or modified, closure and post-closure plans for the Gary facility according to a schedule approved by U.S. EPA and the State of Indiana;


G. Order defendants CCCI and Hjersted to comply with the applicable interim status regulations pending closure of the Gary facility;

H. Order defendants CCCI and Hjersted, on or before January 20, 1986, to submit to U.S. EPA a bond, which bond shall be forfeited if defendants fail to submit or implement properly either the closure plan or the post-closure plan for the Gary site according to the approved schedule;

I. Assess civil penalties against defendants CCCI and Hjersted of up to \$25,000 per day for each violation of RCRA and the applicable regulations;

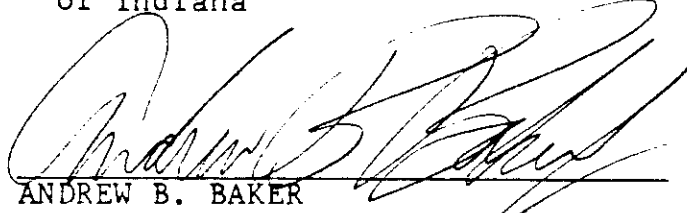
- J. Award Plaintiff its costs of this action; and
- K. Award such additional relief as this Court may deem appropriate.

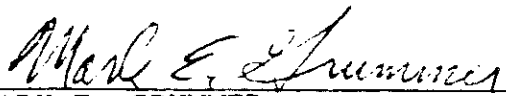
Respectfully submitted,

FOR 
F. HENRY HABICHT, II
Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

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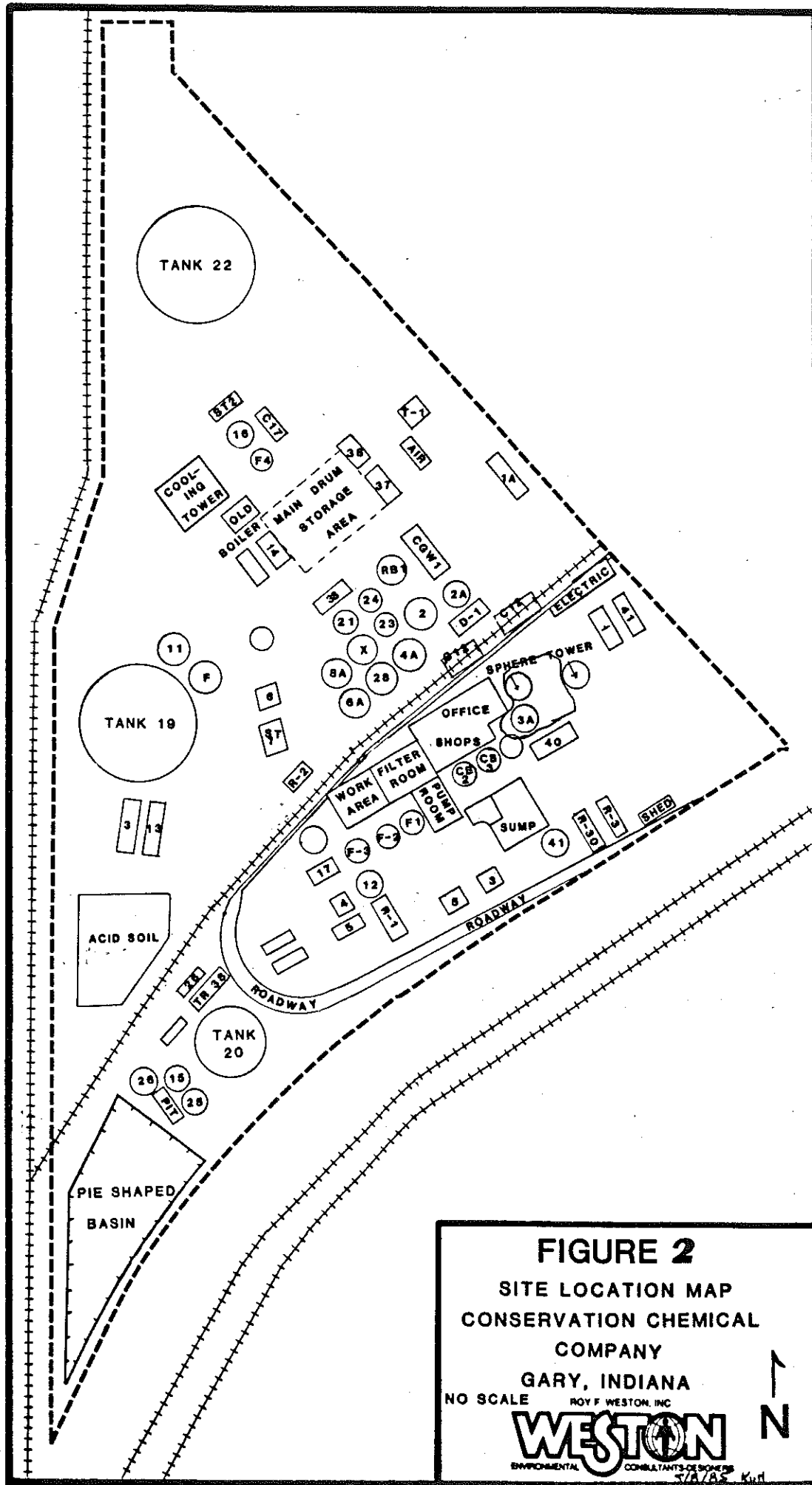
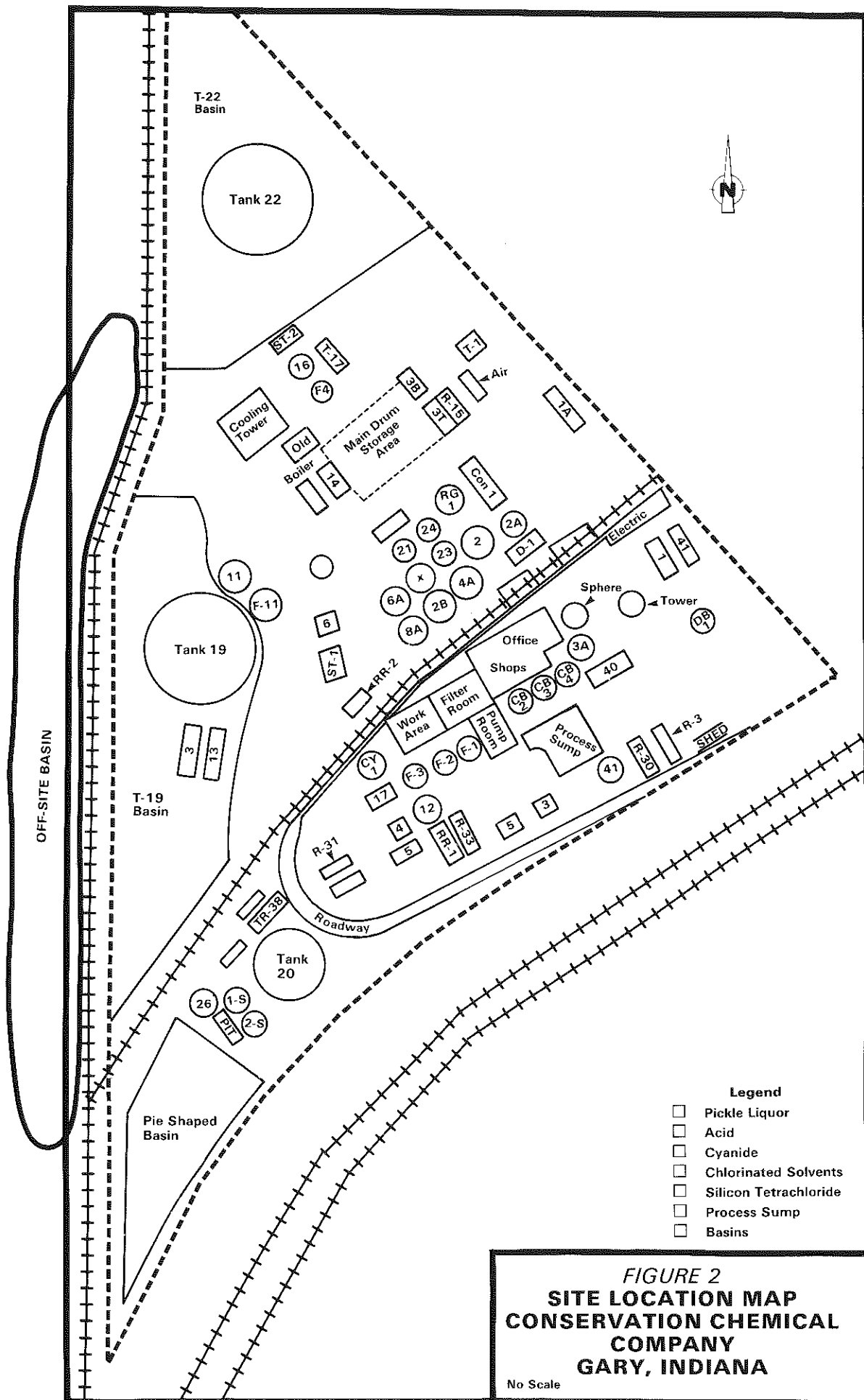
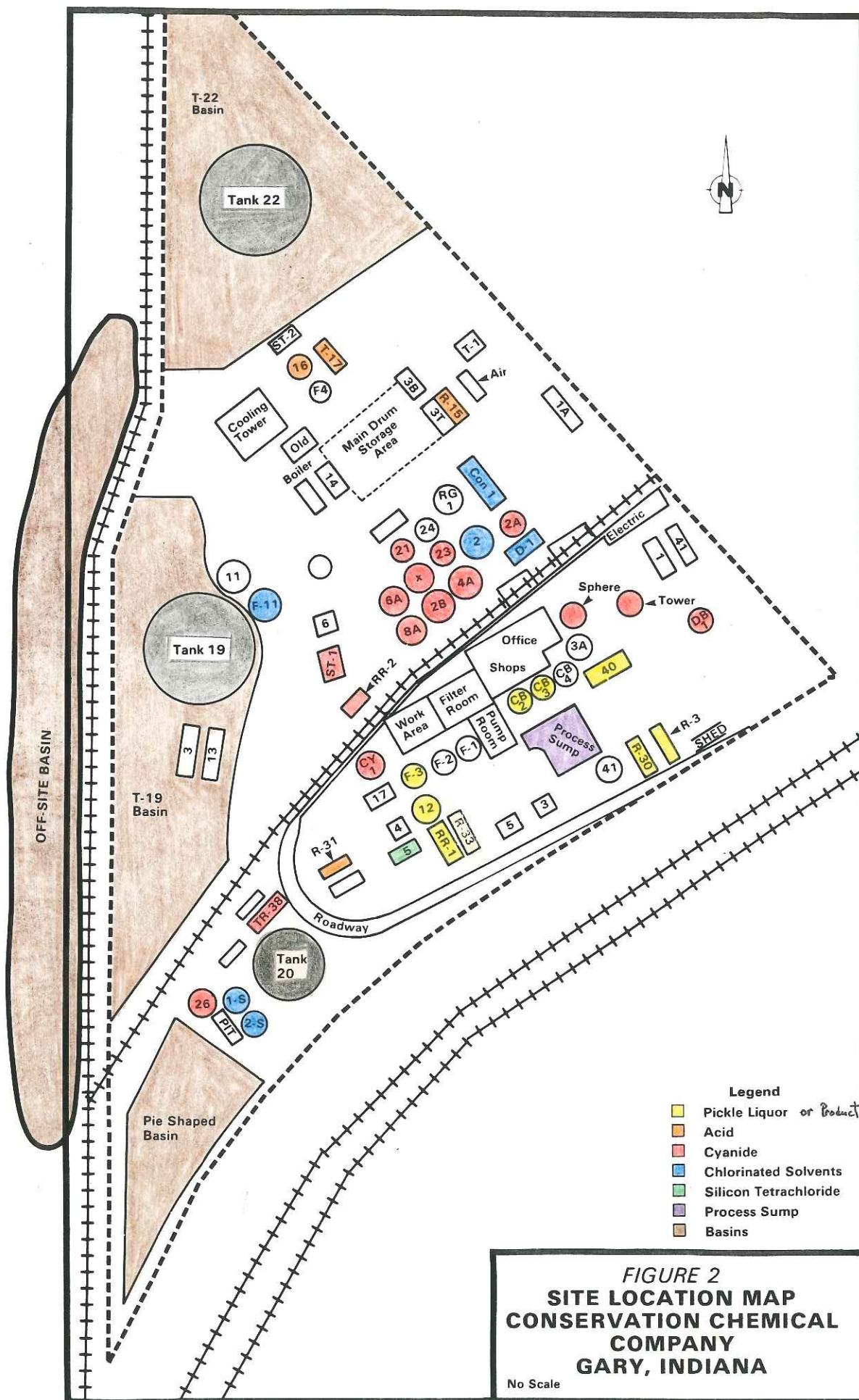


FIGURE 2
 SITE LOCATION MAP
 CONSERVATION CHEMICAL
 COMPANY
 GARY, INDIANA
 NO SCALE ROY F. WESTON, INC.
WESTON
 ENVIRONMENTAL CONSULTANTS-DESIGNERS
 37A/B5 K.H.

PLAINTIFF'S
 EXHIBIT
 25
 H86-9
 P.I.





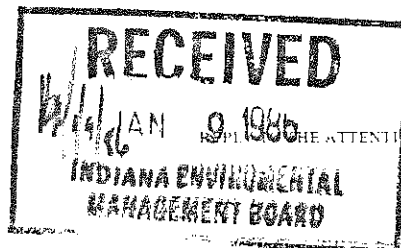


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

DEC 3 1985



Ralph W. Pickard, Secretary
Indiana Environmental Management Board
1330 W. Michigan Street
Indianapolis, IN 46206

RE: Initiation Of Judicial Action For Injunctive And Other Relief Under RCRA In Matter Of: Conservation Chemical Company of Illinois IND 040888992

Dear Secretary Pickard:

Enclosed please find a copy of a Complaint and Partial Consent Decree to be filed with the United States District Court shortly in the above-referenced matter. This letter and copy of these documents constitute notice to the State of Indiana of the commencement of this action under §3008 of the Resource Conservation and Recovery Act, 42 U.S.C. §6908.

I note that your Agency has initiated a related administrative action concerning the same facility, which is located at 6500 Industrial Highway, Gary, Indiana. It does not appear that there is any conflict between our actions, and the matter has previously been discussed by our respective staffs. Verbal notice of this action was given to Ms. Christa Henson of your staff on December 30, 1985.

If you have any questions concerning this matter, please feel free to contact me at (312) 353-2094, or to contact Jonathan T. McPhee of my staff at (312) 886-5348.

Sincerely yours,

Robert B. Schaefer
Regional Counsel

Enclosure

cc w/encl: William Sierks
Andrew Baker

RECEIVED
JAN 10 8 29 AM '86
DIVISION OF ENVIRONMENTAL
POLITICS AND ENERGY
U.S. ENVIRONMENTAL PROTECTION AGENCY

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CONSERVATION CHEMICAL COMPANY
OF ILLINOIS and NORMAN B. HJERSTED,

Defendants.

DRAFT 2:30 p 12/31

CIVIL ACTION NO.

COMPLAINT

Plaintiff, United States of America, on behalf of the Administrator of the U.S. Environmental Protection Agency (hereinafter "U.S. EPA"), alleges the following:

NATURE OF ACTION

1. This is a civil action for preliminary and permanent injunctive relief and for the imposition of civil penalties pursuant to Sections 3008(a) and (g) of the Resource Conservation and Recovery Act, as amended (hereinafter "RCRA"), 42 U.S.C. §§6928(a) and (g), arising from defendants' failure to comply with the requirements of RCRA for hazardous waste disposal facilities. Specifically, the United States seeks an order enjoining defendants Conservation Chemical Company of Illinois and Norman B. Hjersted from placing hazardous waste into four land disposal units located at and near defendants' hazardous waste disposal facility, requiring defendants to submit and implement proper closure and post-closure plans for those land disposal units and for the facility as a whole

requiring defendants to comply with regulations under RCRA, and enjoining operation of the facility until defendants obtain a final hazardous waste facility permit under RCRA. The United States also seeks an order imposing civil penalties upon defendants for their violations of RCRA.

JURISDICTION AND VENUE

2. This court has jurisdiction over this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. §6928(a), and 28 U.S.C. §§1331, 1345 and 1355. Pursuant to 42 U.S.C. §§6928(a) and 28 U.S.C. §1391(b), venue is proper in this district because the defendants' hazardous waste facility is located in this district and because the violations occurred in this district.

3. In accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. §6928(a)(2), the State of Indiana has been notified of the commencement of this action.

DEFENDANTS

4. Defendant Conservation Chemical Company of Illinois (hereinafter "CCCI") is a corporation organized under the laws of the State of Missouri. CCCI owns or operates a hazardous waste facility located at 6500 Industrial Highway, Gary, Indiana (hereinafter "Gary site" or "Gary facility"), at which hazardous wastes have been generated, stored, treated, and disposed. The Gary facility includes four surface impoundments into which defendants have placed hazardous wastes. Each of the four surface impoundments is a hazardous waste "disposal facility" within the meaning of 320 Indiana Administrative Code ("IAC") 4.1-1-7.

5. Defendant Norman B. Hjersted (hereinafter "Hjersted"), an individual, is the President and principal stockholder of CCCI. At times relevant hereto, Hjersted was responsible for the overall operation of the Gary site. Hjersted directed and controlled expenditures for repairs, improvements, and operations at the Gary site in excess of \$500.00 per month and made decisions concerning environmental compliance at the Gary site. Hjersted is an "operator" of the Gary facility within the meaning of 320 IAC 4.1-1-7. Hjersted has indicated his intention to halt operations at the facility by December 25, 1985.

STATUTORY AND REGULATORY BACKGROUND

6. RCRA was enacted on October 21, 1976. The statute establishes a regulatory program for the management of hazardous wastes. 42 U.S.C. §6902 and §6921 et seq. U.S. EPA has promulgated regulations under RCRA governing facilities that manage hazardous waste. These regulations are codified at 40 C.F.R. Parts 260-271.

7. Section 3005 of RCRA, 42 U.S.C. §6925, generally prohibits the operation of any hazardous waste facility except in accordance with a permit. Section 3005(e) of RCRA, 42 U.S.C. §6925(e), further provides that a hazardous waste facility which was in existence on November 19, 1980 may obtain "interim status" to continue operating until final action is taken by U.S. EPA or

an authorized State with respect to its permit application, so long as the facility satisfies certain conditions specified in that section. Those conditions include filing a timely notice with U.S. EPA that the facility is treating, storing, or disposing of hazardous waste, and filing a timely application for a hazardous waste permit. The owner or operator of a facility with interim status must comply with 40 C.F.R. Part 265 or equivalent state regulations.

8. Section 213(a) of the Hazardous and Solid Waste Amendments of 1984, P.L. 98-616, 96 Stat. 3221 (codified at 42 U.S.C. §6925(e)(2)), provides that by November 8, 1985, the owner or operator of a land disposal facility which was granted interim status by November 8, 1984, shall: (a) apply for a final determination of its permit application and (b) certify that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements. Section 3005(e)(2) specifically provides that the failure to meet these requirements shall result in the automatic termination of the land disposal facility's interim status.

9. Section 3006 of RCRA, 42 U.S.C. §6926, provides that a State may obtain Federal authorization to administer the RCRA hazardous waste management program in that State.

10. On August 18, 1982, U.S. EPA granted to the State of Indiana Phase I interim authorization under Section 3006 of RCRA to carry out certain portions of the RCRA hazardous waste management program in Indiana. At this time, the State program

includes those regulations covering the operation of interim status facilities, including groundwater monitoring requirements, financial responsibility requirements, and closure and post-closure standards, which are set forth at 320 IAC 4.1 Rules 1 through 32.

11. Those standards and requirements contained in the hazardous waste management program for which the State of Indiana has been granted authorization by U.S. EPA are enforceable by the federal government pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. §6928(a)(2).

THE SITE AND SITE OPERATIONS

12. The Gary site is a four-acre parcel of land located in an industrial area of Gary, Indiana. The site is bounded on the west and southeast by the Elgin, Joliet, and Eastern Railroad (hereinafter "EJ&E Railroad") rights of way, and on the northeast by a vacant industrial lot. The Gary Municipal Airport borders the site along the southeast side. The Grand Calumet River flows in a northeasterly direction approximately one mile south of the site. A map of the site is attached as Exhibit A.

13. The four land disposal units at the Gary facility are identified on Exhibit A as Basin T-19, Basin T-22, the "Offsite Basin" and the "pie basin." Basins T-19 and T-22 are diked areas creating two large storage impoundments. The "Offsite Basin" is in an area adjacent to the western boundary

of the Gary site, located upon property owned by the EJ&E Railroad. Basins T-19 and T-22 and the Offsite Basin are "surface impoundments" within the meaning of 320 IAC 4.1-1-7. The "pie basin", which is located in the southeastern corner of the site, is both a "surface impoundment" and a "waste pile" within the meaning of 320 IAC 4.1-1-7.

14. Since April, 1967, materials have been brought to the site for treatment, storage, or disposal. These materials contained cyanide and acids, including spent pickle liquor; drums containing various chemical wastes and halogenated and non-halogenated solvents; separator sludge, and slop oil emulsion solids. These materials are "hazardous wastes" within the meaning of Section 1003(5) of RCRA, 42 U.S.C. §6903(5), and the implementing regulations at 320 IAC 4.1-3.3.

15. Since April, 1967, the defendants have placed hazardous wastes into the four surface impoundments located at and near the site. The four surface impoundments contain hazardous wastes whose constituents include high concentrations of heavy metals including chromium, cadmium, zinc, mercury, arsenic, and lead.

16. Since April, 1967, the defendants have placed hazardous wastes into tanks located at the site. Hazardous wastes have leaked and spilled from these tanks onto the ground and into surface impoundments at and near the site.

ENFORCEMENT HISTORY

17. On September 28, 1985, U.S. EPA issued to CCCI and other persons an administrative order pursuant to Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act (hereinafter "CERCLA"), 42 U.S.C. §9606. In the Administrative Order, U.S. EPA directed respondents to remove and dispose of certain hazardous wastes contained in approximately forty leaking and deteriorating tanks and in several hundred drums at the Gary facility. In addition, U.S. EPA is conducting a response action at the Gary facility, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, in which U.S. EPA is removing several hundred thousand gallons of PCB-contaminated waste oil from the Gary site. The CERCLA administrative order and the response action involve the Gary site but do not address the activities and contamination described in Paragraphs 14 through 16 above.

✓ 18. On August 20, 1985, the State of Indiana filed an administrative complaint against CCCI alleging violations of RCRA regulations at the Gary facility, which include the failure to install and implement a groundwater monitoring system, and violations of requirements for inspection and reporting, security, and freeboard and protective cover for surface impoundments. There has been no order for final relief entered in the state's action.

ATTAINMENT OF INTERIM STATUS

19. Pursuant to Section 3010(a) of RCRA, 42 U.S.C. §6930(a), on August 18, 1980, the defendants notified U.S. EPA that hazardous wastes were being treated, stored, or disposed at the Gary site. Thereafter, pursuant to Section 3005(a) of RCRA, 42 U.S.C. §6925(a), and 40 C.F.R. §270.10, on November 18, 1980, the defendants submitted the first part ("Part A") of an application for a permit to treat, store or dispose of hazardous wastes at the Gary site.

20. By virtue of the notification to EPA and the submission of the Part A permit application, the Gary facility was accorded "interim status" under Section 3005(e)(1) of RCRA, 42 U.S.C. §6925(e)(1), which allowed it to continue to operate pending final administrative disposition of the permit application. 40 C.F.R. §270.70(a).

21. As the owners or operators of a hazardous waste facility with "interim status," defendants were required to comply with the Interim Status Standards For Owners and Operators of Hazardous Waste Facilities at 40 C.F.R. Part 265 and, after State authorization, the State regulations which then applied, 320 IAC 4-1 Rules 1 through 32.

LOSS OF INTERIM STATUS

22. Section 3005(e)(2) of RCRA, 42 U.S.C. §6925(e)(2), requires that defendants, as owners or operators of a land disposal facility with interim status, submit the second part, "Part B", of the permit application and certify compliance with

the applicable ground-water monitoring and financial responsibility requirements of RCRA on or before November 8, 1985. Section 3005(e)(2) further provides that, if defendants fail to comply with that provision, land disposal units at the facility would lose interim status.

23. The defendants did not submit any of the certifications required by Section 3005(e)(2) of RCRA, 42 U.S.C. §6925(e)(2).

24. Because it failed to make the required certifications, on November 8, 1985, the Gary facility lost its interim status to introduce hazardous waste into the four surface impoundments at the Gary site.

25. Pursuant to Section 3005(e)(2) of RCRA, 42 U.S.C. §6925(e)(2) and 320 IAC 4.1-21-1 through 4.1-21-10, defendants are required to submit proper closure and post-closure plans for the four surface impoundments to U.S. EPA and the State of Indiana no later than 15 days after termination of interim status.

26. Defendants did not submit proper closure and post-closure plans for the land disposal units at the Gary facility.

INTERIM STATUS REQUIREMENTS

27. Pursuant to Sections 3005(a) and 3006 of RCRA, 42 U.S.C. §§6925(a) and 6926, defendants are required to comply with regulations governing facilities with interim status.

27. Defendants have violated and continue to violate interim status requirements applicable to their facility in the following respects:

(a) Defendants have failed to implement a groundwater monitoring program capable of determining the Gary facility's impact on the uppermost aquifer underlying the facility as required by 320 IAC 4.1-20-1 through 20-5.

(b) Defendants have failed to comply with the financial assurance requirements applicable to the facility as required by 320 IAC 4.1-22-35.

(c) Defendants have failed to include in the contingency plan for the Gary facility a list of all emergency equipment located at the facility, including a description of the location and a brief outline of the capabilities of the equipment as required by 320 IAC 4.1-18-3(e).

(d) In their operating records for the Gary facility, defendants have failed to provide the description and quantity of each hazardous waste received and the method of treatment, storage or disposal of each such waste as required by 320 IAC 4.1-19-4(b).

(e) Defendants have failed to provide 24-hour site security or an adequate artificial or natural barrier to control entry to the Gary facility as required by 320 IAC 4.1-16-5(b).

?

(f)

(f) Defendants have failed to manage hazardous wastes at the Gary facility so as to prevent fire, explosion or release of those wastes that could threaten human health or the environment. Defendants' management of hazardous waste has resulted in numerous spills and discharges of hazardous wastes at the facility, including a spill of at least 500 gallons of cyanide and 10,000 gallons of PCB-contaminated waste oil as required by 320 IAC 4.1-17(2).

(g)

(g) When hazardous wastes were spilled or released at the Gary facility, defendants have failed to identify the character, exact source, amount, and extent of spilled or released materials as required by 320 IAC 4.1-18-7(j).

(f)

(f) Defendants have failed to maintain a minimum of 60 centimeters (two feet) of freeboard in tanks and surface impoundments at the Gary facility as required by 320 IAC 4.1-25-2 and 25-3.

(g)

(g) Defendants have failed to provide a protective cover for earthen dikes used to create surface impoundments at the Gary facility as required by 320 IAC 4.1-20-1 through 20-5.

29. Pursuant to 320 IAC 4.1 Rules 15-25 the requirements are and listed in ¶ 28 above remain applicable to the Gary facility throughout its life, including closure and post closure care periods after cessation of waste treatment or disposal or other active operation.

30. Defendants have admitted the violations alleged in subparagraphs 28 c, e and (g above.)
(which "g" is page 4? see)

FACILITY CLOSURE REQUIRED

31. Pursuant to 320 IAC 4.1-21-3(a), the owner or operator of a hazardous waste facility must have a written closure plan which meets the requirements of that section.

32. Pursuant to 320 IAC 4.1-21-3(b), the owner or operator of a hazardous waste facility is required to amend his closure plan whenever there is a change in the expected year of closure of the facility.

33. Pursuant to 320 IAC 4.1-21-3(c), the owner or operator of a hazardous waste facility is required to submit a proper closure plan for the facility at least 180 days before the date he expects to begin closure of the facility and no later than 15 days after termination of interim status or issuance of a judicial decree or compliance order to cease receiving wastes or close.

34. Pursuant to 320 IAC 4.1-21-3(c), closure shall commence within thirty days after the date on which the owner or operator expects to receive the final volume of wastes.

35. Pursuant to 320 IAC 4.1-21-4(a), the owner or operator of a hazardous waste facility is required to treat, remove from the site or dispose of all hazardous wastes at the facility in accordance with an approved closure plan within 90 days after receiving the final volume of hazardous waste, or within 90 days after approval of the closure plan, whichever is later.

36. Pursuant to 320 IAC 4.1-21-7(a), the owner or operator of a hazardous waste facility is required to implement a post-closure plan for the facility upon completion of closure and continue post-closure care for 30 years thereafter.

37. On July 13, 1984, the defendants submitted to Indiana and EPA a closure plan for the Gary facility. On January 30, 1985, U.S. EPA notified the defendants that their closure plan was deficient, did not comply with RCRA and the applicable regulations, and required defendants to submit a revised plan.

38. On May 14, 1985, the defendants submitted to Indiana and EPA a revised closure plan for the Gary facility. At a meeting with representatives of EPA on December 20, 1985, plaintiff advised the defendants that the revised plan was deficient.

39. After December 20, 1985, the defendants received no additional hazardous wastes at the Gary facility.

40. On December 20, 1985, the defendants ceased the treatment of hazardous wastes at the Gary facility.

41. At a meeting with representatives of EPA on December 20, 1985, defendant Hjersted stated his intention to remove valuable assets from the Gary facility to a warehouse in Kansas City, Missouri.

FIRST CLAIM FOR RELIEF

42. Paragraphs 1-27 above are incorporated here by reference.

43. Defendants' failure to certify by November 8, 1985 that the land disposal units at the Gary facility are in compliance with all applicable groundwater monitoring and financial responsibility requirements of RCRA and the applicable regulations resulted in the automatic loss on that date of "interim status" authorization to treat, store, or dispose of hazardous waste at the four land disposal units at the Gary facility.

44. Defendants' failure to submit proper closure and post-closure plans for the land disposal units at the Gary facility within 15 days after the loss of interim status is a continuing violation of RCRA and the applicable Indiana regulations at 320 IAC 4.1 Rule 21.

SECOND CLAIM FOR RELIEF

45. Paragraphs 28-31 above are incorporated here by reference.

✓ 46. As alleged in ¶ ? above, the defendants violated and are continuing to violate "interim status" regulations applicable to the Gary facility. These violations are continuing violations of RCRA and the applicable Indiana regulations.

THIRD CLAIM FOR RELIEF

47. Paragraphs 1-36, above are incorporated here by reference.

48. Defendants failure to submit a proper closure and post-closure plan is a continuing violation of RCRA and the applicable Indiana regulations at 320 IAC 4.1 Rule 21.

49. Pursuant to Sections 3008(a) and 3008(g) of RCRA, 42 U.S.C. §§6928(a) and 6928(g), defendants, as owners or operators of the Gary facility and its land disposal units, are liable for injunctive relief to prevent further violations of the Act and for civil penalties of up to \$25,000 per day of violation.

50. Injunctive relief is necessary to assure that the Defendants will comply with RCRA and the applicable regulations including requirements to submit and implement proper closure and post-closure plans for the Gary facility and its land disposal units.

WHEREFORE, the United States requests that the Court grant it the following relief:

A. Preliminarily and permanently enjoin defendants CCCI and Hjersted from introducing any hazardous wastes into any land disposal unit at the Gary facility;

B. Preliminarily and permanently enjoin defendants CCCI and Hjersted from introducing, generating, treating, storing, or disposing of any hazardous waste at the Gary facility until they obtain a final hazardous waste facility permit under RCRA;

C. Order defendants CCCI and Hjersted to inventory and account for any asset removed from the Gary facility;

D. Order defendants CCCI and Hjersted, on or before January 20, 1986, to design a groundwater monitoring system for the Gary facility which meets the requirements of RCRA and the applicable regulations and to complete the installation of that system within ninety (90) days after approval of the design by U.S. EPA and the State of Indiana;

E. Order defendants CCCI and Hjersted, on or before January 20, 1986, to comply with all applicable financial responsibility requirements of RCRA;

F. Order defendants CCCI and Hjersted to submit to U.S. EPA and the State of Indiana for their approval or modification, and to implement as approved or modified, closure and post-closure plans for the Gary facility according to a schedule approved by U.S. EPA and the State of Indiana;

G. Under defendants CCCI and Hjersted to comply with the applicable interim status regulations, pending closure of the Gary facility;

H. Order defendants CCCI and Hjersted, on or before January 20, 1986, to submit to U.S. EPA a bond, which bond shall be forfeited if defendants fail to submit or implement properly either the closure plan or the post-closure plan for the Gary site according to the approved schedule;

I. Assess civil penalties against defendants CCCI and Hjersted of up to \$25,000 per day for each violation of RCRA and the applicable regulations;

J. Award Plaintiff its costs of this action; and

K. Award such additional relief as this Court may deem appropriate.

Respectfully submitted,

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Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	CIVIL ACTION NO.
CONSERVATION CHEMICAL COMPANY)	
OF ILLINOIS, et al.)	
)	
)	
Defendants.)	
)	

PARTIAL CONSENT DECREE FOR PRELIMINARY RELIEF

Pursuant to agreement between plaintiff, United States of America, and defendant Conservation Chemical Company of Illinois (hereinafter "CCCI"), it is ORDERED, ADJUDGED and DECREED as follows:

JURISDICTION

1. The court has jurisdiction of this action pursuant to Section 3008(a) of the Resource Conservation and Recovery Act (hereinafter "RCRA"), 42 U.S.C. §§ 6928(a) and 28 U.S.C. § 1345.

APPLICABILITY

2. This Consent Decree applies to the United States and to CCCI, and defendant's officers, directors, employees, contractors, agents and any successors in interest.

FINDINGS

3. This Consent Decree applies to the hazardous waste treatment and land disposal facility owned and operated by CCCI which is located at 6500 Industrial Highway, Gary, Indiana ("Gary facility"), including, in particular, four surface impoundments

containing hazardous wastes on and/or near the Gary facility as shown on the map attached hereto as Exhibit A.

4. CCCI has owned and operated, and conducted hazardous waste treatment operations at, the Gary facility since approximately April, 1967. CCCI has treated, stored and disposed of hazardous waste within the meaning of § 1004(5) of RCRA, 42 U.S.C. § 6903(5). At the Gary facility, CCCI has treated spent pickle liquor from steel finishing operations; stored hazardous waste, including inter alia cyanide, chlorinated and non-chlorinated solvents, PCBs, and assorted laboratory chemicals in drums ("lab packs"); and disposed of hazardous waste, including spent pickle liquors, sludges and process wastes, which have a low pH level and contain high concentrations of metals, in various tanks and in the four surface impoundments located at and near the Gary facility.

5. Hazardous wastes have been treated, stored and disposed of at the Gary facility, rendering the facility and defendant CCCI subject to regulation under RCRA. CCCI's Gary facility became subject to the "interim status" requirements of Section 3005(e)(1) of RCRA in 1980, by CCCI's filing with the U.S. EPA a notification of hazardous waste activity on June 25, 1980 and Part A of its hazardous waste permit application on November 18, 1980. As owner and operator of a hazardous waste land disposal facility, CCCI was required by Section 3005(e)(2) of RCRA, 42 U.S.C. 6925(e)(2), to (a) apply for a final determination of its permit application, and (b) certify compliance with all applicable groundwater monitoring and financial responsibility

requirements by November 8, 1985. The failure to submit a final permit application and the required certification by November 8, 1985 results in the automatic termination of interim status for the facility's land disposal units, which include the surface impoundments in Exhibit A.

6. On August 8, 1982, the State of Indiana was granted "Phase I Interim Authorization" to manage portions of the RCRA program relative to facilities located in Indiana, pursuant to Section 3006 of RCRA. U.S. EPA retains oversight authority and the ability to seek judicial relief for violations of regulations adopted by the state consistent with and under its interim authorization. Under the Hazardous and Solid Waste Amendments of 1984, U.S. EPA retains authority to seek judicial relief for violations of § 3005(e)(2).

7. CCCI has not submitted the required certification of compliance with groundwater monitoring and financial responsibility requirements. CCCI acknowledges that it has not submitted an effective closure plan for the land disposal portions of its facility by November 23, 1985, as required upon its failure to certify compliance with the groundwater monitoring and financial responsibility requirements of Section 3005(e)(2). Consequently, pursuant to Section 3005(e)(2) of RCRA, 42 U.S.C. 6925(e)(2), the Gary facility has lost interim status for its land disposal units under RCRA. Pursuant to this Consent Decree, CCCI shall not treat, store or dispose of any hazardous wastes at the Gary facility until and unless the facility has all permits necessary to be in full compliance with the statutory and regulatory requirements of RCRA.

CESSATION OF OPERATIONS

8. Defendant CCCI shall take the following actions according to the schedule set forth below:

(a) On and after December 20, 1985, CCCI shall accept no more hazardous or solid waste, including spent pickle liquor, at the Gary facility.

(b) On or before December 20, 1985, CCCI shall cease all operations at the Gary facility, involving treatment of pickle liquor or other hazardous or solid waste, and shall produce no more ferric chloride.

(c) On or before January 20, 1986, CCCI shall submit to the U.S. Environmental Protection Agency ("U.S. EPA") in writing its determination concerning the final disposition of the chlorine remaining in the railroad tank car at the Gary facility. The means chosen shall comply with all applicable federal and state laws and regulations.

(d) CCCI shall not resume any hazardous waste storage, treatment or disposal activities except closure activities, at the Gary facility until and unless the facility has all permits necessary to be in full compliance with the statutory and regulatory requirements of RCRA.

PREPARATION OF CLOSURE PLAN

9. On or before January 21, 1986, CCCI shall submit to the State of Indiana and to the U.S. EPA a plan for closure and post-closure care of the four surface impoundments at the Gary facility. This plan shall comply with all requirements of 320 IAC 4.1-21-1 through 4.1-21-10 including requirements

relating to groundwater monitoring.

FURTHER RELIEF TO BE SOUGHT

10. This Partial Consent Decree does not address the implementation of the closure and post-closure plans. The United States is expressly reserved the right to seek further relief, including any corrective action provided for under RCRA and appropriate groundwater monitoring and financial assurances, and the United States is expressly reserved the right to expend funds and to seek cost recovery and injunctive relief from the defendants to this action under CERCLA. The United States is expressly reserved the right to seek relief against Norman B. Hjersted under RCRA or CERCLA. The Court makes no findings with respect to the liability of Norman B. Hjersted in his individual capacity. By entering into this Decree on behalf of CCCI, Norman B. Hjersted does not acknowledge individual liability on his part, nor does he waive any defenses he may have to this action.

ACCESS

11. CCCI shall provide to the U.S. EPA and the State of Indiana, and their employees, attorneys, contractors and representatives, access at all times to the Gary facility to observe conditions, take samples, obtain documents and to take any actions necessary to insure compliance with this Consent Decree.

NOT A RELEASE

12. This Consent Decree does not release the defendants from any liability under RCRA, 42 U.S.C. § 6901 et seq., or any other federal or state law or regulation, including any liability for further injunctive relief, civil penalties, costs, or fines.

The United States intends to pursue such further relief. If CCCI does not comply with this Consent Decree, the United States may seek a temporary restraining order or any other relief provided by law to obtain the relief provided herein.

WHEREFORE, this Consent Decree issuing with the agreement and concurrence of the parties hereto, the Court finds that there is no just reason for delay in entry of this Consent Decree, and the Clerk of this Court is directed forthwith to enter this Decree as a judgment.

Entered

FOR THE PLAINTIFF:

District Judge

FOR THE DEFENDANT:

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Land and Natural Resources Division
U.S. Department of Justice

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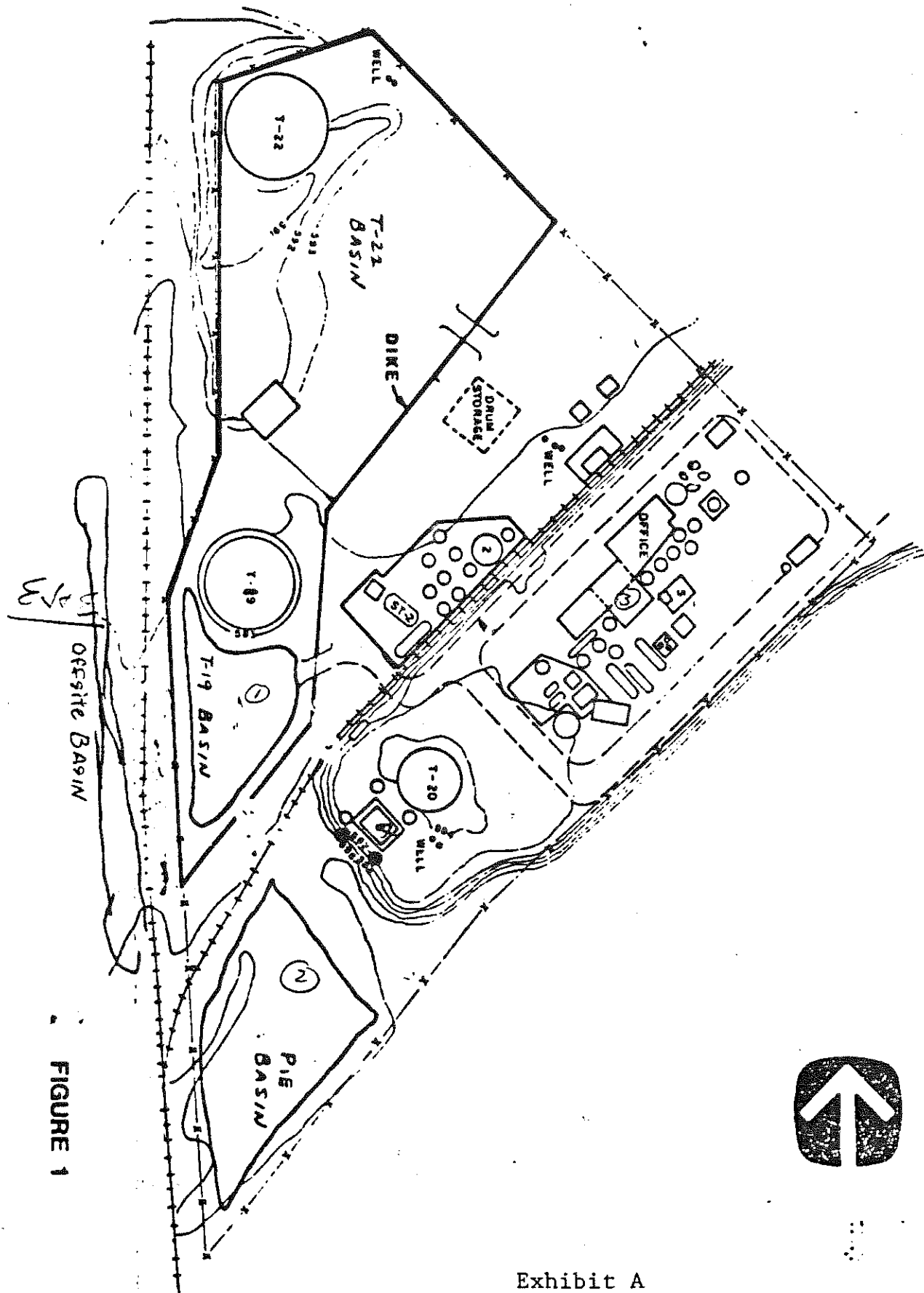


FIGURE 1

Dames & Moore

Exhibit A

STATE OF INDIANA
ENVIRONMENTAL MANAGEMENT BOARD
1330 W. MICHIGAN STREET
P.O. BOX 1964
INDIANAPOLIS, INDIANA 46206-1964

Handwritten: ZAWODNI

Handwritten: LAKE
CONFIDENTIAL
180

STATE OF INDIANA)
COUNTY OF MARION)

SS:

BEFORE THE ENVIRONMENTAL MANAGEMENT
BOARD OF THE STATE OF INDIANA

IN THE MATTER OF THE ENVIRONMENTAL
MANAGEMENT BOARD OF THE STATE OF
INDIANA,

Complainant

vs.

CONSERVATION CHEMICAL COMPANY OF
ILLINOIS

Respondent

CAUSE NO. N-264

Vertical Stamp:
SEP 23 10 47 AM '85
DIVISION OF LAND
POLLUTION CONTROL
STATE
BOARD OF HEALTH

ANSWER

Respondent Conservation Chemical Company of Illinois submits the following
Answer to Complaint, Cause No. N-264:

1. Conservation Chemical submitted to the U.S. Environmental Protection Agency a notification of hazardous waste activity on August 18, 1980 and subsequent submitted a part A permit application to US EPA to achieve interim status as a hazardous waste treatment storage and disposal facility. Respondent further submitted a state part A permit application on March 23, 1982.
2. Respondent has recorded daily inspections of areas subject to spills in the operators log.
3. Respondent admits that pursuant to 320 IAC 4-6 (40 CFR 265.52 (e)), the Contingency Plan shall include a list of all emergency equipment at the facility, location of equipment, physical description of each item on the list and a brief outline of its capabilities. Respondent admits that it had not included a brief outline of the capabilities of all emergency equipment located at the facility and listed in the Contingency Plan. This is being prepared and will be placed in the Contingency Plan.
4. Respondent admits that pursuant to 320 IAC 4-6 (40 CFR 265.73 (b) (1)), the operating record shall contain a description and the quantity of each hazardous waste received and the method (s) and date (s) of each waste's treatment storage or disposal at the facility as required by Appendix I of 40 CFR 265. Respondent admits that its operating record didn't include the codes required by Appendix I. The operating record is being revised to include the codes in Appendix I of 40 CFR 265.

5. Respondent denies that subject to 40 CFR 265.14 (b) that security measures have not been provided which include a 24-hour surveillance. In addition to this the fence is being replaced with a higher and stronger fence at the point of normal or controlled entry.
6. The surface impoundment alluded to in the part A permit application referred to an area called the "pie basin". This is located in the extreme southwest corner of the property and from the air would resemble the shape of a piece of pie. After discussions with the Region V EPA officials concerning the characterization of this facility and further reading of the regulations it was determined that the term "surface impoundment" was not appropriate for this facility and should be referred to as a "waste pile". The part B application reflects this change. It was assumed that part A would not have to be corrected but that part B designations would be accurate.

It is believed that the release alluded to by the State Inspector on March 25 was a high water level and flow to a levy road under construction between basins for tank no.'s 19 and 22. It is our understanding that the release of surface water that did occur was confined to this levy road and a small portion of one end of the basin surrounding tank no. 22. We have no evidence that the contents of the water within the basin surrounding tank no. 19 contains hazardous waste or hazardous waste constituents. In our forthcoming meeting, we will have information which supports this contention.

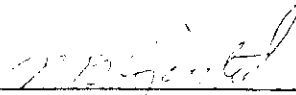
7. Respondent agrees that no persons shall deposit any contaminants upon the land in such a place that would create a pollution hazard. In the incident referred to on March 25 respondent does not believe contaminants have been deposited upon the land. A sampling grid pattern was established and samples taken of the area in question surrounding a portion of the basin for tank no. 19. This analysis will be presented at the meeting.
8. Respondent agrees that according to 40 CFR 265.56 (b) that whenever there is a release of hazardous waste the emergency coordinator must immediately identify the character and exact source and amount and a real extent of any released materials. Based on our knowledge of the contents of tank no. 19 materials going into the basin surrounding no. 19, respondent did not believe that any potential existed for these materials to be characterized as hazardous waste. However, since reviewing the complaint, respondent (as mentioned in item 5 above) has taken samples of the released material and soil and had them analyzed for the upcoming meeting.
9. Respondent agrees that according to 40 CFR 265.222 a minimum of 60 centimeters of free board shall be maintained in a surface impoundment. As previously stated, respondent does not characterize basin no. 19 as a surface impoundment of hazardous waste.
10. Respondent agrees that according to 40 CFR 265.223 earthen dikes surrounding a hazardous waste surface impoundment must have a protective cover to avoid erosion or breakdown from any cause of the integrity of the dike which might result in an uncontrolled release.
11. Respondent agrees that according to 40 CFR 265.90 the owner or an operator of a surface impoundment which is used to manage hazardous waste must implement a groundwater monitoring program capable of determining the facilities impact on the quality of groundwater on the uppermost aquifer. Since respondent does not consider this facility a surface impoundment to manage hazardous waste, a groundwater monitoring program had not been implemented.

However, respondent recognizes that interpretations of the regulations is not absolute. Respondent has hired a consulting engineer from the firm of Dames and Moore to get a separate opinion on the matter, plus an estimate of costs and likely procedures.

12. The fine proposed is unreasonable taking into account the seriousness of the alleged violation and respondents good faith effort to comply with all applicable regulations and requirements. Further answering respondent believes that the proposed penalties are inappropriate and that they are not designed to remedy the violations alleged.
13. Pursuant to 40 CFR § 22.15 (c) respondent requests a hearing upon the issues raised by the complainant.
14. In response to the proposed Final Order, respondent has been documenting daily and thrice daily inspections of areas subject to spills such as loading and unloading areas, etc....
15. Respondent has revised a contingency plan to include a brief outline of the capability of all emergency equipment listed in the Contingency Plan.
16. Respondent has revised the operating record to include the codes of Appendix I of 40 CFR 265.
17. Respondent has purchased a large segment of fence and it should be installed within fourteen (14) days. This replacement will be on the access side of the plant and will be a means to control entry through the gates at all times. This is in addition to the continuing 24-hour surveillance provided.
18. Respondent shall maintain a minimum of 60 centimeters of free board on all basins regardless of material contained.
19. Respondent has strengthened the earthen dike referred to which surrounds tank no. 19. Respondent requests that the State Inspector inspect the dike once again in order to judge whether the earthen dike and its protective cover are adequate.
20. Respondent has taken samples in the area to the north and east of the basin surrounding tank no. 19 on a grid of approximately 15' on square. The samples were dug into the soil approximately 6 inches deep. The material was composited and sent to an outside lab for metals and PCB analysis. The purpose of this plan is to set the degree and the extent of contamination of the soil and any impact on the groundwater or adjacent surface waterways. This analysis will be available by the date of the meeting.

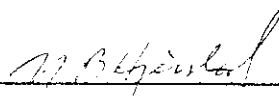
CONSERVATION CHEMICAL COMPANY / OF ILLINOIS

By


Norman B. Hjersted, President
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(913) 262-3649

CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Answer to the Complaint was filed with the State of Indiana Environmental Management Board, 1330 W. Michigan Street, P.O. Box 1964, Indianapolis, Indiana 46206-1964; and true and correct copy was mailed to James M. Garrettson, Hearing Officer, Office of the Attorney General, 1330 W. Michigan Street, P.O. Box 1964, Indianapolis, Indiana 46206-1964 on this 20th day of September, 1985.


Norman B. Hjersted, President

NBH/kt
Enclosure

cc: Ms. Ann Schol Long, Deputy Attorney General
Ms. Sally Swanson, U.S. EPA, Region V
Lake County Health Department
Mr. Veri Myers
Mr. Thomas Russell
Mr. Ted Warner
Mr. Noel Anderson